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BEFORE THE ARIZONA CORPORATION COMMISSION 1 2 **MIKE GLEASON** Chairman 3 WILLIAM MUNDELL

2007 SEP 28 P 3: 34 AZ CORP COMMISSION DOCKET CONTROL

Arizona Corporation Commission DOCKETED

Commissioner 4 JEFF HATCH-MILLER SEP 28 2007

Commissioner KRISTIN MAYES **Commissioner**

DOCKETED BY

GARY PIERCE Commissioner

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IN THE MATTER OF THE APPLICATION OF DIECA COMMUNICATIONS DBA COVAD COMMUNICATIONS COMPANY, ESCHELON TELECOM OF ARIZONA, INC., MCLEODUSA TELECOMMUNICATIONS **SERVICES, INC., MOUNTAIN** TELECOMMUNICATIONS, INC., XO COMMUNICATIONS SERVICES, INC. AND **OWEST CORPORATION'S REQUEST FOR COMMISSION PROCESS TO ADDRESS KEY UNE ISSUES ARISING FROM** TRIENNIAL REVIEW REMAND ORDER, INCLUDING APPROVAL OF QWEST WIRE **CENTER LISTS**

DOCKET NOS. T-03632A-06-0091 T-03406A-06-0091 T-03267A-06-0091 T-03432A-06-0091 T-04302A-06-0091 T-01051B-06-0091

NOTICE OF FILING RESPONSIVE **TESTIMONY OF RENEE** ALBERSHEIM AND RACHEL **TORRENCE**

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Please take notice that Qwest Corporation hereby files the Responsive Testimony of

Renee Albersheim and Rachel Torrence, copies of which are attached, with associated exhibits.

RESPECTFULLY SUBMITTED this 28th day of September, 2007.

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OWEST CORPORATION

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Corporate Counsel

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5	Phoenix, AZ 85007		
6	COPY of the foregoing hand delivered this 28 th day of September, 2007, to:		
7	and 20 any or sopromeor, 2007, 10		
8	Dwight D. Nodes Assistant Chief Administrative Law Judge		
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11	Phoenix, AZ 85007		
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman WILLIAM A. MUNDELL JEFF HATCH-MILLER KRISTIN MAYES GARY PIERCE

IN THE MATTER OF THE APPLICATION OF) DOCKET NO. T-03632A-06-0091
DIECA COMMUNICATIONS DBA COVAD) T-03267A-06-0091
COMMUNICATIONS COMPANY, ESCHELON) T-04302A-06-0091
TELECOM OF ARIZONA, INC., MCLEODUSA) T-03406A-06-0091
TELECOMMUNICATIONS SERVICES, INC.,	ý T-03432A-06-0091
MOUNTAIN TELECOMMUNICATIONS, INC.,	у́ Т-01051B-06-0091
XO COMMUNICATIONS SERVICES, INC. AND)
QWEST CORPORATION'S REQUEST FOR)
COMMISSION PROCESS TO ADDRESS KEY)
UNE ISSUES ARISING FROM TRIENNIAL	j
REVIEW REMAND ORDER, INCLUDING	· j
APPROVAL OF QWEST WIRE CENTER LISTS	,)
	·

RESPONSIVE TESTIMONY ON THE SETTLEMENT AGREEMENT

OF

RENÉE ALBERSHEIM

QWEST CORPORATION

SEPTEMBER 28, 2007

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Arizona Corporation Commission DOCKET NO. T-03632A-06-0091, et al. Qwest Corporation Responsive Testimony of Renée Albersheim Page i, October 6, 2006

EXECUTIVE SUMMARY

This testimony and the testimony of Rachel Torrence of Qwest provide an overview of the Settlement Agreement and why it is in the public interest, and respond to issues raised in the testimony of Armando Fimbres of the Arizona Corporation Commission Staff regarding the Settlement Agreement reached between Qwest and the Joint CLECs to implement the non-impairment of wire centers as mandated by the FCC's *Triennial Review Remand Order* ("*TRRO*"). Qwest's testimony addresses each of the issues that Mr. Fimbres raises and demonstrates that the Settlement Agreement is in the public interest.

I. IDENTIFICATION OF WITNESS

- Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH
 QWEST.
- A. My name is Renée Albersheim. I am employed by Qwest Services Corporation, parent company of Qwest Corporation ("Qwest"), as a Staff Advocate. I am testifying on behalf of Qwest. My business address is 1801 California Street, 24th floor, Denver, Colorado, 80202.

8 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

9 A. Yes. On June 23, 2006, I filed direct testimony in this proceeding. On October 6,
10 2006, I filed rebuttal testimony in this proceeding.

II. PURPOSE OF TESTIMONY

12 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

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13 A. The purpose of my testimony is to provide an overview of the Settlement Agreement
14 and why it is in the public interest. I also respond to the non-collocation issues
15 raised in the testimony of Arizona Corporation Commission staff witness Mr.
16 Armando Fimbres. The collocation issues are addressed in the testimony of Qwest
17 witness Rachel Torrence. This testimony shows that each of the issues that Mr.
18 Fimbres raises are addressed by the Settlement Agreement and that the Settlement
19 Agreement between Qwest and the Joint CLECs is in the public interest.

III. SUMMARY OF THE SETTLEMENT AGREEMENT

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2	Q.	PLEASE DESCRIBE THE CONTENTS OF THE SETTLEMENT AGREEMENT.
3	A.	The Settlement Agreement contains the following six sections:1
4 5		 Introduction – describes the litigation that the Settlement Agreement resolves.
6 7		II. Definitions – provides specificity for the terms used in the Agreement.
8 9 10		III. Initial Commission Approved Wire Center List – describes the basis for the initial wire center list provided in Attachment A to the Settlement Agreement.
11 12 13 14		IV. Non-Recurring Charge For Conversions Using the Initial Wire Center List and for Future Commission-Approved Additions To That List – details the terms and conditions to which a non-recurring charge is applied.
15 16		 V. Methodology – details how business lines and collocations are counted and documented to determine non-impairment.
17 18 19		VI. Future Qwest Filings to Request Commission Approval of Non- Impairment Designations and Additions to the Commission- Approved Wire Center List.
20 21		VII. Other Provisions – contains additional negotiated terms governing the Settlement Agreement.
22	Q.	PLEASE DESCRIBE THE ATTACHMENTS TO THE SETTLEMENT AGREEMEN
23	Α.	The Settlement Agreement includes the following attachments:
24 25 26		Attachment A – TRRO Non-Impaired Wire Centers: this is the initial list of non-impaired wire centers for which the parties seek Commission Approval.
27 28 29 30		Attachment B – Triennial Review Remand Order ("TRRO") Wire Center Amendment: this is an Interconnection Agreement Amendment to be used to implement the terms of the Settlement Agreement. This Amendment is for use with settling parties Covad, Integra, Popp.com

 $^{^{1}\,\}mathrm{A}$ copy of the Settlement Agreement is attached as Exhibit RA-RS1.

Arizona Corporation Commission DOCKET NO. T-03632A-06-0091, et al. Qwest Corporation Responsive Testimony of Renée Albersheim Page 3, October 6, 2006

1	Attachment C - This attachment contains language to be inserted into
2	Eschelon's Interconnection Agreement to implement the terms of the
3	Settlement Agreement.

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- Attachment D Triennial Review Remand Order ("TRRO") Wire Center Amendment: this is an Interconnection Agreement Amendment to be used to implement the terms of the Settlement Agreement. This Amendment is for use with settling parties McLeodUSA and TDSM.
- Attachment E This attachment contains a model protective order that the settling parties advocate be used for all future wire center proceedings.

11 Q. PLEASE DISCUSS THE INITIAL COMMISSION APPROVED WIRE CENTER LIST 12 DESCRIBED IN SECTION III OF THE SETTLEMENT AGREEMENT.

A. Qwest and the Joint CLECs have agreed on an initial list of wire centers that qualify as non-impaired wire centers at specified tier levels and for specified facilities. For Arizona, the list includes the same 10 wire centers that were requested in my direct testimony which was filed on June 23, 2006. This list is included in Attachment A to the Settlement Agreement. The negotiated effective date for the 10 Arizona wire centers listed on the Initial Commission-Approved Wire Center list is March 11, 2005.

20 Q. WHAT ARE THE PROVISIONS OF SECTION IV OF THE SETTLEMENT 21 AGREEMENT RELATING TO THE NON-RECURRING CHARGE FOR 22 CONVERSIONS OF UNES?

23 A. The parties to the Settlement Agreement have agreed to a net non-recurring charge
24 of \$25 for each facility converted from a UNE to an alternative service or product.
25 This rate will apply for at least three years from the date of a Commission order
26 approving the Settlement Agreement. Qwest has agreed to provide a lump-sum
27 credit to those CLECs that converted a non-impaired facility prior to the effective
28 date of the Settlement Agreement and who paid a higher non-recurring charge in
29 connection with the conversion.

- 1 Q. PLEASE EXPLAIN THE METHODOLOGY FOR DETERMINING NON-IMPAIRED
 2 FACILITIES, NON-IMPAIRMENT, OR TIER DESIGNATIONS, AS DESCRIBED IN
 3 SECTION V OF THE SETTLEMENT AGREEMENT.
- A. The parties have agreed to a detailed and comprehensive methodology to determine non-impairment and/or tier designations, including how to count business lines and fiber based collocators, as briefly described below.

Business Lines: The number of Qwest retail business lines will be determined using the most recently filed unadjusted ARMIS 43-08 data reported to the FCC. All UNE loops are included, and are counted at full capacity. i.e. DS1s will count as 24 lines and DS3s will count as 672 lines. UNE-P business lines are calculated based on subtracting residence UNE-P listings from total UNE-P lines. Qwest Platform Plus, Qwest Local Services Platform, and other similar platform products will be calculated using actual business line counts.

Collocation: A fiber based collocator may be counted if the carrier is unaffiliated with Qwest, maintains a collocation arrangement with active power supply in a Qwest Wire Center, and operates a fiber optic cable or comparable transmission facility that terminates at a collocation arrangement within the Wire Center and leaves the Wire Center premises. Qwest must conduct a field visit to verify these criteria and must also validate the criteria against the most recent order and/or billing data. Qwest must also send a certified letter to each identified fiber based collocator which provides at least 10 days for the carrier to provide feedback concerning the information upon which Qwest is relying.

Arizona Corporation Commission DOCKET NO. T-03632A-06-0091, et al. Qwest Corporation Responsive Testimony of Renée Albersheim Page 5, October 6, 2006

- 1 Q. PLEASE DESCRIBE SECTION VI OF THE SETTLEMENT AGREEMENT 2 REGARDING FUTURE QWEST FILINGS TO REQUEST APPROVAL OF NON-
- 3 IMPAIRMENT DESIGNATIONS AND ADDITIONS TO THE APPROVED WIRE
- 4 CENTER LIST?
- Future requests that are based solely on the number of fiber based collocators may be made at any time during the year. Requests that are based in whole or in part on business line counts must be made prior to July 1st of each year, using the prior year line count data. Section VI of the Settlement Agreement also provides details on the information to be included with each filing, notices that are to be given, and
- 10 time frames associated with the process.

11 Q. WHAT IS THE PURPOSE OF SECTION VII OF THE SETTLEMENT

12 **AGREEMENT?**

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This section of the Settlement Agreement has a number of miscellaneous provisions regarding various issues, including interconnection agreement provisions and amendments, refunds related to Qwest identified non-impairment designations that are not identified as non-impaired in Attachment A to the Settlement Agreement, as well as general provisions about settlement, precedent, and termination of the Settlement Agreement.

IV. THE SETTLEMENT AGREEMENT IS IN THE PUBLIC INTEREST

20 Q. PLEASE EXPLAIN WHY THE SETTLEMENT AGREEMENT IS IN THE PUBLIC 21 INTEREST.

22 A. First, Qwest believes that the Settlement is in the public interest because it resolves 23 contested issues without litigation, and reduces the potential for future disputes by 24 setting forth an agreed upon process for future wire center designations. The 25 Settlement represents an industry supported solution for the determination and 26 implementation of non-impaired wire centers for both the Initial Commission

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Approved List, as well as for any future requests by Qwest for non-impaired status.

As a matter of policy, it is generally accepted that an agreement which is supported by opposing parties is a better outcome than litigation over the terms.

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Second, the Settlement creates judicial and administrative efficiency. It ends the present litigation, including the possibility of future appeals over a contested decision. The Settlement also contains terms for future updates to the non-impaired wire center list, which will limit the likelihood of litigation over those future filings. Further, since the Settlement is a multi-state agreement, Qwest and the CLECs will avoid having to manage and administer different, and possibly conflicting, terms in each state. For instance, having a uniform process for counting business lines and the number of fiber based collocators throughout the six states governed by the Settlement, will be more efficient and reduce the possibility of confusion or misunderstandings about the process.

Third, the Settlement provides certainty to CLECs, and as a result, to their end-user customers. This is especially so because the Settlement creates a definitive initial list of non-impaired wire centers by establishing clear implementation guidelines and procedures to follow in the future.

V. RESPONSE TO STAFF TESTIMONY ON THE SETTLEMENT AGREEMENT

- 19 Q. WHAT VINTAGE DATA DOES STAFF WITNESS FIMBRES RECOMMEND FOR
 20 USE IN CONNECTION WITH BUSINESS LINE COUNTS FOR THE INITIAL SET
 21 OF WIRE CENTERS UNDER CONSIDERATION IN THIS PROCEEDING?
- 22 A. In his Responsive and Rebuttal testimony, Mr. Fimbres recommended the use of 2004 ARMIS 43-08 data.

- 1 Q. IS THIS THE SAME VINTAGE OF DATA THE PARTIES RELIED UPON FOR PURPOSES OF DETERMINING THE INITIAL SET OF NON-IMPAIRED WIRE
- 3 CENTERS IN THE SETTLEMENT?

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- 4 A. Yes. The parties used 2004 ARMIS 43-08 data.
- DOES QWEST AGREE WITH THE STATEMENT MADE BY MR. FIMBRES ON PAGE 3 OF HIS SETTLEMENT AGREEMENT TESTIMONY THAT SECTION III OF THE SETTLEMENT AGREEMENT SHOULD BE MODIFIED TO REFLECT THE USE OF 2004 ARMIS 43-08 DATA?
- No. Although the parties to the Settlement did, in fact, rely on the 2004 ARMIS 43-9 A. 08 data, Qwest does not believe that it is necessary or useful to add such a 10 statement to the Settlement Agreement itself. Qwest and the Joint CLECs very 11 thoroughly negotiated the terms of the Settlement Agreement, including all of the 12 wording contained in the Agreement and the proposed interconnection agreement 13 language attached to the Settlement Agreement. Qwest supports the Settlement 14 Agreement in whole, without changing the terms that the parties have carefully 15 worked through. The wire centers that the parties agreed would be the initial list of 16 non-impaired wire centers were part of this careful negotiation. 17
- 18 Q. MR. FIMBRES STATES AT PAGE 4 OF HIS TESTIMONY THAT "[T]HE PUBLIC INTEREST REQUIRES CLARIFICATION ON CUSTOMER IMPACT TO EXPLAIN WHY CUSTOMER IMPACT IS NO LONGER A CONCERN." PLEASE RESPOND.
- As Qwest noted in its earlier testimony in this matter, it does not believe there will be a negative customer impact as a result of the conversion process. In her rebuttal testimony, Ms. Million stated:

In order to ensure that the conversion process is transparent to the CLEC and its customers' services, Qwest interjects a number of manual activities into the process so that certain automated steps do not occur that could otherwise result in disruption of those services. The purpose of many of the tasks included in the conversion process is to avoid placing the CLECs' end-user

Arizona Corporation Commission DOCKET NO. T-03632A-06-0091, et al. Qwest Corporation Responsive Testimony of Renée Albersheim Page 8, October 6, 2006

customers at risk. To date, after more than 500 conversions involving this type of circuit ID change, Qwest is not aware of any complaints from CLECs about customers whose service has been disrupted by this conversion process. Therefore, Mr. Denney's attempts to emphasize "potential risks" in Qwest's process to the CLECs' customers is merely a smokescreen and proves exactly why Qwest undertakes those steps, thereby making the conversion transparent.

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In the time since Ms. Million's testimony was filed Qwest has processed more than 1400 conversions for CLECs without incident. Furthermore, the rate, rather than the underlying process, was the focus of the settlement negotiations.

- 12 Q. MR. FIMBRES STATES AT PAGE 6 OF HIS TESTIMONY THAT STAFF DOES
 13 NOT SEE A NEED TO LIMIT QWEST'S ABILITY TO MAKE NON-IMPAIRMENT
 14 FILINGS IN THE SECOND HALF OF THE YEAR. PLEASE RESPOND.
- 15 A. Qwest agreed to make filings for additions to the non-impaired wire center list based 16 on business line counts by July 1st of each year as part of the negotiation "give and 17 take" during the settlement negotiations. Qwest stands by the negotiated terms of 18 the Settlement Agreement.
- 19 Q. MR. FIMBRES RECOMMENDS THAT THE SETTLEMENT AGREEMENT BE
 20 BINDING ON ALL CLECS. IS IT QWEST'S POSITION THAT CLECS WHO DID
 21 NOT PARTICIPATE IN THE SETTLEMENT PROCESS SHOULD BE BOUND BY
 22 THE SETTLEMENT AGREEMENT?
- A. No. Qwest's position is that the terms of the Settlement should only apply to the parties who signed the Agreement. However, the Commission may issue an order in this proceeding which binds all CLECs.

THE

1	Q.	MR. FIMBRES RECOMMENDS AT PAGE 7 OF HIS TESTIMONY "THAT THE
2		COMMISSION SHOULD TAKE THE ADDITIONAL STEP OF SENDING A NOTICE
3		TO ALL CLECS WITH OPERATING AUTHORITY IN ARIZONA AND PROVIDING
4		THEM AN OPPORTUNITY TO (1) COMMENT ON THE PROPOSED AGREEMENT
5		AND (2) SUBMIT ANY CONCERNS THAT SHOULD BE CONSIDERED FOR A
6		FINAL AGREEMENT." DOES QWEST CONSIDER THIS ADDITIONAL STEP
7	*	NECESSARY?
8	A.	No. In fact, Staff has previously stated on the record that providing additional notice
9		to CLECs who are not on the current service list is unnecessary. During the
10		procedural conference on July 19th, Qwest asked if the current service list was
11		adequate to cover all who needed notice of this proceeding. As the following
12		excerpt from the hearing transcript demonstrates, both Staff and the ALJ agreed that
13		it was.
14 15 16 17 18 19		MR. CURTRIGHT: Point of clarification, then, Judge Nodes. In Phase I, we had a service list that was, if I may say, skinnied down. We asked the very large mass of service-listed people, if you recall, whether or not they wished to actively receive documents, and a small number of participants replied affirmatively. And we've been carrying them forward on our mailing list for service and that sort of thing since then.
21 22 23 24 25		Would it be safe to assume that we will continue to use that same service list that we currently have for Phase II? My thought is that those people have been on notice about the issues, and particularly since this is now in the same docket, they know the same number to check if they do want to become re-involved.
26 27		ACALJ NODES: That would be my inclination, but let me ask the other parties if they have any different thoughts.
28 29 30		Ms. Scott, do you believe that maintaining the current service list of those people who previously affirmatively identified an interest is sufficient?
31		MS. SCOTT: Yes, I believe it is. ²

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² See Procedural Conference Transcript, July 19th, 2007, pages 14-16.

The ALJ then went on to summarize the discussion as follows:

ACALJ NODES: Okay. And I think as Mr. Curtright indicated, I mean, given that this is – and this probably reinforces the idea that we should maintain this same docket open for this additional phase. That if people are checking who have been following the proceeding and have an interest in it, that they'll be able to see what the subsequent information is and basically what is going on in the proceeding.

So, you know, we previously gave everyone an opportunity to be included in the service list, and so it seems to me that anyone who didn't so indicate proceeds at their own peril . . . ³

Therefore, it is not necessary to provide additional notice to the other CLECs as Mr.

Fimbres has recommended.

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14 Q. HOW DO YOU RESPOND TO THE STATEMENT MADE BY MR. FIMBRES AT 15 THE BEGINNING OF HIS TESTIMONY THAT THE SETTLEMENT AGREEMENT 16 IS NOT IN THE PUBLIC INTEREST?

Earlier in my testimony, I set forth the reasons why the Settlement Agreement is in the public interest. Some of the positions taken by Staff do not serve the public interest, and in some cases, could actually undermine the public interest. For instance, if the provision were removed which requires Qwest to request non-impairment status based on business lines by July 1st of each year, then there would be a different process in Arizona than in the other 5 states, which would be administratively less efficient for both Qwest and the CLECs. Since both Qwest and the Joint CLECs agreed upon this provision, it is difficult to see how the public interest would be advanced by removing it.

Similarly, Staff may feel that the there is no harm in including the fact that the Initial Commission Approved Wire Center List was based on 2004 ARMIS 43-08 data. However, Mr. Fimbres did not provide any specific reasons why doing so was

³ Id. at page 16.

Arizona Corporation Commission DOCKET NO. T-03632A-06-0091, et al. Qwest Corporation Responsive Testimony of Renée Albersheim Page 11, October 6, 2006

necessary to further the public interest. Staff has not provided any specific support to show that the changes staff recommends are in the public interest.

VI. CONCLUSION

4 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

My testimony provides an overview of the Settlement Agreement and responds to the issues that Commission Staff witness Mr. Armando Fimbres has raised. Qwest supports the Settlement Agreement as originally filed and has shown that approval of the Settlement Agreement would be in the public interest. Therefore, Qwest asks that this Commission approve the Settlement Agreement between Qwest and the Joint CLECs, without altering the terms of the Agreement.

11 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

12 A. Yes, it does.

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman WILLIAM A. MUNDELL JEFF HATCH-MILLER KRISTIN MAYES GARY PIERCE

IN THE MATTER OF THE APPLICATION OF DIECA COMMUNICATIONS DBA COVAD COMMUNICATIONS COMPANY, ESCHELON TELECOM OF ARIZONA, INC., MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., MOUNTAIN TELECOMMUNICATIONS, INC., XO COMMUNICATIONS SERVICES, INC. AND QWEST CORPORATION'S REQUEST FOR COMMISSION PROCESS TO ADDRESS KEY UNE ISSUES ARISING FROM TRIENNIAL REVIEW REMAND ORDER, INCLUDING) DOCKET NO. T-03632A-06-0091) T-03267A-06-0091) T-04302A-06-0091) T-03406A-06-0091) T-03432A-06-0091) T-01051B-06-0091)
APPROVAL OF QWEST WIRE CENTER LISTS)
APPROVAL OF QWEST WIRE CENTER LISTS)

RESPONSIVE EXHIBITS

OF

RENÉE ALBERSHEIM

QWEST CORPORATION

SEPTEMBER 28, 2007

Arizona Corporation Commission Docket No. T-03632A-06-0091, et al Qwest Corporation - Exhibit RA-RS1 Responsive Exhibits of Renee Albersheim September 28, 2007

MULTI-STATE SETTLEMENT AGREEMENT REGARDING WIRE CENTER DESIGNATIONS AND RELATED ISSUES

This Multi-State Settlement Agreement ("Settlement Agreement") is entered into between Qwest Corporation ("Qwest") and Covad Communications Company ("Covad"), Eschelon Telecom, Inc. ("Eschelon"), Integra Telecom Holdings, Inc. ("Integra"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), Onvoy, POPP.Com ("POPP"), US Link, Inc. d/b/a TDS Metrocom, Inc. ("TDSM"), and XO Communications Services, Inc. ("XO"). Qwest and each CLEC are referred to separately as a "Party" or collectively as the "Parties."

I. INTRODUCTION

WHEREAS, the Federal Communications Commission ("FCC") issued its Report and Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 and 98-147 (effective October 2, 2003) ("TRO"); and, on February 4, 2005, the FCC released the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand (effective March 11, 2005) (Triennial Review Remand Order) (FCC 04-290) ("TRRO");

WHEREAS, on February 15, 2006, some or all of the Joint CLECs filed requests with the state Commissions in Arizona, Colorado, Minnesota, Oregon, and Utah asking that the state Commissions, in accordance with the TRRO, develop and approve a list of Non-Impaired Wire Centers and a process for future updates of the wire center list;

WHEREAS, the aforementioned state Commissions opened the following dockets in response to these filings: Arizona (Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (Docket No. UM 1251), and Utah (Docket No. 06-049-40);

WHEREAS, the Washington Utilities and Transportation Commission (WUTC)

investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the TRRO on local competition.

WHEREAS, on March 3, 2006, Qwest also petitioned for a Commission investigation and expedited proceeding to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues, and bind all CLECs.

WHEREAS, the Joint CLECs and Qwest have reached resolution of their disputes. Because of the multi-state nature of these issues, the Parties have determined that it is in their mutual interest to effect a multi-state settlement of issues.

THEREFORE, the Parties agree to the following resolution of issues:

II. DEFINITIONS

"Commission" for Arizona means the Arizona Corporation Commission or any successor state agency.

"Commission" for Colorado means the Colorado Public Utilities Commission or any successor state agency.

"Commission" for Minnesota means the Minnesota Public Utilities Commission or any successor state agency.

"Commission" for Oregon means the Public Utility Commission of Oregon or any successor state agency.

"Commission" for Utah means the Utah Public Service Commission or any successor state agency.

"Commission" for Washington means the Washington Utilities and Transportation Commission or any successor state agency.

"Commission-Approved Wire Center List" is Attachment A to this Settlement Agreement, as

may be updated by the Commission, as described in Section V of this Settlement Agreement.

"Effective Date of this Settlement Agreement" is the effective date of the Commission order approving this Settlement Agreement.

"Effective Date of Non-Impairment Designation" is the date on which the non-impairment designation begins as specified in this Settlement Agreement at Section III(B) for the Initial Commission-Approved Wire Center List and as later determined pursuant to Section VI (F) for future non-impairment designations identified in a Commission-Approved Wire Center List.

"Filing Date" is the date on which Qwest submits its non-impairment or tier designation filing, with supporting data, as described in Section VI of this Settlement Agreement, to the Commission for review and provides the Commission and CLECs that, as of that date, have signed the applicable protective order/agreement (or are subject to a standing protective order). If Qwest provides the data to the Commission and Joint CLECs on different dates, the Filing Date shall be the later of the two dates.

"Initial Commission-Approved Wire Center List" is Attachment A to this Settlement Agreement as of the Effective Date of this Settlement Agreement.

"Joint CLECs" refers collectively to Covad Communications Company ("Covad"), Eschelon Telecom, Inc. ("Eschelon"), Integra Telecom Holdings, Inc. ("Integra"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), Onvoy, POPP.Com ("POPP"), US Link, Inc. d/b/a TDS Metrocom ("TDSM"), and XO Communications Services, Inc. ("XO").

"Non-Impaired Facilities" are those network elements identified in an applicable FCC order as no longer available as unbundled network elements ("UNEs") under 47 U.S.C. § 251(c)(3) based on non-impairment or tier designations and that have been reviewed and approved by a Commission using the process and methodology set forth in Section IV of this Settlement Agreement.

"Non-Impaired Wire Center" is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

"Parties" refers collectively to Qwest Corporation and the Joint CLECs.

"Qwest" refers to "Qwest Corporation."

"Wire Center" For purposes of this Settlement Agreement, a Wire Center is the location of a Qwest local switching facility containing one or more Central Offices as defined in the Appendix to part 36 of chapter 1 of Title 47 of the Code of Federal Regulations. The Wire Center boundaries define the area in which all customers served by a given Wire Center are located.

III. INITIAL COMMISSION-APPROVED WIRE CENTER LIST

Notwithstanding anything that may be to the contrary in the Definitions set forth in Section I and the Methodology set forth in Section V of this Settlement Agreement, the Parties agree the Qwest Wire Centers listed in Attachment A qualify as Non-Impaired Wire Centers at the tier levels and for the facilities noted on Attachment A.

For Wire Centers identified in Attachment A, the Parties agree as follows:

- A. The Joint CLECs agree that, upon the Effective Date of this Settlement Agreement, they will not order Non-Impaired Facilities identified in the Initial Commission-Approved Wire Center List. An order approving this Settlement Agreement is, and will also be recognized by the Parties as, an order approving the non-impairment or tier designations identified in the Initial Commission-Approved Wire Center List.
- B. The Effective Date of Non-Impairment Designations contained in the Initial Commission-Approved Wire Center List is March 11, 2005, with the following exceptions:
 - 1. **July 8, 2005**: The Effective Date of Non-Impairment Designations filed in 2005 after Qwest's initial February 18, 2005 filing and identified in the final column of Attachment A shall be July 8, 2005.
 - 2. Thirty (30) Days After the Effective Date of this Settlement Agreement: The Effective Date of Non-Impairment Designations for the

Denver East and Colorado Springs Main Wire Centers shall be 30 days following the Effective Date of this Settlement Agreement.

IV. NON-RECURRING CHARGE FOR CONVERSIONS USING THE INITIAL WIRE CENTER LIST AND FOR FUTURE COMMISSION-APPROVED ADDITIONS TO THAT LIST

- A. Qwest will, for at least three (3) years from the Effective Date of this Settlement Agreement, assess an effective net non-recurring charge of \$25 for each facility converted from a UNE to an alternative service or product under this Settlement Agreement. Qwest may assess a non-recurring conversion charge in excess of \$25 so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable. Qwest shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.
- B. For purposes of settlement, Qwest will provide a clearly identified lump-sum credit of \$25 per converted facility to those CLECs that have (1) converted Non-Impaired Facilities to a Qwest alternative service before the Effective Date of this Settlement Agreement pursuant to the TRRO and (2) paid a \$50 non-recurring conversion charge. In the event a CLEC has, prior to the Effective Date of this Settlement Agreement, disconnected a converted circuit and, as a result that circuit is no longer in service as of the Effective Date of this Settlement Agreement, Owest will include that disconnected circuit in the lump-sum credit described above if the CLEC provides: (1) the circuit ID of the disconnected circuit; (2) the BAN number on which the disconnected circuit was billed; and (3) the BAN number to which the CLEC would like the credit applied. Once the CLEC has provided this information, Qwest will provide the reimbursement credit as set forth herein. A CLEC will not be required to provide a copy of the disconnection order as a condition of including the disconnected circuit in the lump sum credit provided under this Paragraph.

C. The Parties may disagree as to the amount of the applicable non-recurring charge after three years from the Effective Date of this Settlement Agreement, and each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Settlement Agreement precludes a Party from addressing the non-recurring charge after three years from the Effective Date of this Settlement Agreement. A different non-recurring charge will apply only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties.

V. METHODOLOGY

Non-Impaired Facilities, non-impairment or tier designations will be determined using the following methodology:

- A. Business Lines Business lines shall be counted as follows:
 - 1. Qwest retail business lines shall be determined using the most recently filed unadjusted ARMIS data reported to the FCC. For purposes of future non-impairment designations, Qwest shall follow FCC ARMIS instructions and will record and count retail business lines in precisely the same manner as business access line data is tracked and recorded in the Wire Center level data Qwest uses to develop its statewide ARMIS 43-08 reports filed annually with the FCC, without making any inter-wire center adjustments to this data and without including the same lines in more than one of the categories listed in paragraphs (2) (4) of this Section V(A).
 - 2. UNE loops connected to a Wire Center where DS1 & DS3 unbundled loops and DS1 & DS3 Enhanced Extended Loops ("EEL") are provided to CLECs shall be counted at full capacity (i.e., DS1s will be counted as 24 business lines and DS3s will counted as 672 business lines).
 - 3. Only Business UNE-P lines will be counted for the Commission-Approved Wire Center List. Business UNE-P lines shall be derived by subtracting the count of listings associated with residential UNE-P from the total number of UNE-P lines.

4. Qwest Platform Plus ("QPP"), Qwest Local Services Platform ("QLSP"), and other similar platform product offerings shall be calculated using actual business line counts for these services.

B. Collocation –

- 1. A fiber-based collocator is defined as any carrier, unaffiliated with the incumbent LEC (Qwest), that maintains a collocation arrangement in an incumbent LEC (Qwest) Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that:
 - a. terminates at a collocation arrangement within the Wire Center;
 - b. leaves the incumbent LEC's (Qwest's) Wire Center premises; and
 - c. is owned by a party other than the incumbent LEC (Qwest) or any affiliate of the incumbent LEC (Qwest), except as set forth in this definition. Dark fiber obtained from an incumbent LEC (Qwest) on an indefeasible right of use basis shall be treated as non-incumbent LEC (non-Qwest) fiber-optic cable. Two or more affiliated fiber-based collocators in a single Wire Center shall collectively be counted as a single fiber-based collocator. For the purposes of this definition, "affiliate" is defined by 47 U.S.C. §153(1) and any relevant interpretation in that title.
- 2. Before classifying a carrier as a fiber-based collocator in a Qwest filing request pursuant to Section VI for Commission approval of a non-impaired designation, Qwest will:
 - a. Confirm that the carrier meets the criteria contained in the definition of fiber-based collocator in 47 C.F.R. § 51.5 (as reflected in paragraph B(1) and subparts above);
 - b. Conduct a field visit to verify and document the above (2.a.) criteria; and

- c. Validate the criteria against the most recent order and/or billing data.
- 3. Express fiber will be counted as a functional fiber facility for purposes of identifying a fiber-based collocator, if it meets the definition of fiber-based collocator in 47 C.F.R. §51.5 (as reflected in paragraph B(1) and subparts above). The Joint CLECs agree not to raise the lack of Qwest-provided power when there is traffic over the express fiber as the sole basis to dispute whether express fiber can be counted as a functional fiber facility for purposes of identifying a fiber-based collocator. For the purpose of this Settlement Agreement, "express fiber" means a CLEC-owned fiber placed to the collocation by Qwest that terminates at CLEC-owned equipment in a collocation and draws power from a remote location.
- 4. Before filing a request pursuant to Section VI for Commission approval of a non-impairment designation, Qwest will send a letter by certified U.S. mail, return receipt requested, to CLECs identified by Qwest as fiber-based collocators, using the contacts identified by each such CLEC for interconnection agreement notices, and inform them that they will be counted by Qwest as fiber-based collocators in Qwest's filing. The CLEC will have a reasonable opportunity (which Qwest will identify in its letter but which will be no less than ten (10) business days from the CLEC's confirmed receipt of Qwest's letter) to provide feedback to this information before Qwest files its request. In the absence of a response by the Qwest-identified collocators, Qwest may rely on the Qwest-identified collocators in its filing. No party shall use the absence of a response from a CLEC collocator as the sole basis for its position.

VI. FUTURE QWEST FILINGS TO REQUEST COMMISSION APPROVAL OF NON-IMPAIRMENT DESIGNATIONS AND ADDITIONS TO THE COMMISSION-APPROVED WIRE CENTER LIST

A. Qwest may file a request(s) with the Commission to obtain additional Non-Impaired Wire Centers as data supporting such designations become available, subject to the following conditions:

- 1. Qwest may request addition of Non-Impaired Wire Centers to the Commission-Approved Wire Center List at any time based solely the number of fiber-based collocators.
- 2. Qwest may request addition of Non-Impaired Wire Centers based in whole or part upon line counts at any time up to July 1 of each year, based on prior year line count data.
- 3. Notwithstanding the above, Qwest will not request addition of any Non-Impaired Wire Centers until after the 2007 ARMIS filing (using December 2006 line count data).
- B. When requesting additional non-impairment designations, Qwest will use the methodology set forth in Section V above, and will use the most recent data available at the time Qwest submits its proposed non-impairment designations for Commission review. For business line counts, Qwest will use and submit the most recent filed ARMIS (as reported) data available at the time of submission of its request to the Commission.
- C. At least five (5) days prior to filing new non-impairment or tier designations for Commission review, Qwest will request a protective order from the Commission to govern the handling of confidential information during the proceedings. Attached as Attachment E to this Settlement Agreement, is a model protective order. The Parties agree to seek from the individual Commission's approval for a standing protective order based upon the attached model protective order that will apply in future proceedings. Where a Commission adopts a standing protective order, Qwest is not required to submit a request for a new protective order, and CLECs that have signed the protective order are not required to re-sign it for each new Qwest request. A Commission may modify a standing protective order using its standard processes and procedures after Qwest has made its filing.
- D. In order to provide all interested parties adequate notice of the scope of the requested protective order and the anticipated Wire Center update proceeding, Qwest will provide CLECs (Joint CLECs and other potentially affected

Competitive Local Exchange Carriers), including at least the contacts identified by each such carrier for interconnection agreement notices, via its email notification channels, with at least five (5) business days notice prior to filing proposed non-impairment or tier designations for Commission review.

- E. Qwest will file supporting data (as outlined below) with the Commission when filing its request to obtain additional non-impairment designations. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective order to CLECs that have signed the applicable protective agreement (or are subject to a standing protective order).
 - 1. If Qwest relies upon Fiber-Based Collocators for its proposed Non-Impairment Designation, the supporting data will include at least the following information:
 - a. The name of each fiber-based collocator.
 - b. The applicable Qwest Ready for Service date.
 - c. The results of any field verification that Qwest undertook to verify the fiber-based collocation, including the field technicians' notes which includes: (1) the Wire Center and state; (2) collocator name; (3) collocation type; (4) fiber type; (5) validation of fiber termination at the fiber-based collocation; (6) validation that fiber exits a Wire Center premises; (7) visual power verification; (8) power verification at Battery Distribution Fuse Bay/Board ("BDFB,") if possible; (9) additional comments from field personnel.
 - d. A copy of the letter sent by Qwest to collocator(s) identified by Qwest as fiber-based collocator(s) requesting validation of status as a fiber-based collocator and ownership/responsibility.
 - e. Copies of any responses to the letter noted in 1(d) above, including an indication of whether the collocator has affirmatively identified (or disputed) itself as a fiber-based collocator; and
 - f. All written correspondence between Qwest and the collocator(s) identified by Qwest as fiber-based collocator(s) regarding the validation of the fiber-

based collocation.

- 2. If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data will include at least the following information:
 - a. The latest available ARMIS 43-08 line counts, using the methodology described in Section V(A) of this Agreement and used to create official ARMIS data on file with the FCC.
 - b. Total wholesale UNE loops shown at the aggregated level for the Wire Center(s) at issue, and by capacity (voice grade, DS1, DS3). This information will also be provided on a disaggregated basis for all CLECs with the CLEC names masked. Qwest will provide to CLEC the masking code information necessary for CLEC to identify its own line count data. Qwest calculations to derive 64-kbps equivalents for high capacity (e.g., DS1 and DS3) loops will also be provided.
 - c. CLEC line counts based upon QPP or Qwest Local Services Platform (or similar platform product) will be provided on a disaggregated basis for all CLECs with CLEC names masked. Qwest will provide to CLEC the masking code information necessary for CLEC to identify its own line count data.
- F. Once Qwest submits its new non-impairment or tier designation filing to request Commission approval, including all of the information identified in Section VI(E) above:
 - A CLEC or any other party will have 30 days from the Filing Date to raise objections to Owest's request with the Commission.
 - 2. If no objections are filed with the Commission, the Effective Date of the Non-Impairment Designation will be thirty (30) days after the Filing Date, unless the Commission orders otherwise ("Effective Date for Undisputed Designations"). The Parties agree that they will request that the Commission not alter the Effective Date for Undisputed Designations without good cause. If no objections are filed with the Commission, the

Joint CLECs agree that they will not order Non-Impaired Facilities in the Wire Center(s) identified on the applicable Commission-Approved Wire Center List as of fifteen (15) days from the Effective Date of the Non-Impairment Designation.

- a. In the event no objections to Qwest filing are filed with the Commission, the Parties agree that they will, within thirty (30) days of the Effective Date of the Non-Impairment Designations, jointly request an expedited order designating as non-impaired the facilities identified in the Qwest filing, if no order has been received.
- b. To facilitate the expedited order described in the previous paragraph, the Parties further agree that they will, within thirty (30) days of the Effective Date of Non-Impairment Designations, include a mutually agreed to proposed order designating as non-impaired the facilities identified by Qwest in its filing on the Filing Date as an attachment to the joint request for an expedited order, if no order has been received.
- 3. If a CLEC or any other party disputes Qwest's proposed non-impairment designations, the Parties agree to ask the Commission to use its best efforts to resolve such dispute within 60 days of the date of the objection.
 - a. In the event no objections are filed with respect to some but not all of the non-impairment designations identified by Qwest in a request on the Filing Date, the Parties agree that they will jointly request an expedited order approving the undisputed designations identified in the Qwest filing on the Filing Date, using the process noted in paragraphs 2(a) and 2(b) above.
- 4. If a CLEC or any other party disputes Qwest's proposed non-impairment designation but Qwest prevails and the Wire Center is added to the Commission-Approved Wire Center List, the Joint CLECs agree they will not order Non-Impaired Facilities in (for loops) and between (for transport) Wire Centers identified on the applicable Commission-

Approved Wire Center List as of fifteen (15) days after the effective date of the Commission order adding it to the Commission-Approved Wire Center List.

- 5. If a CLEC or any other party disputes Qwest's proposed non-impairment designation and prevails, and it is not added to the Commission-Approved Wire Center List, DS1 and DS3 UNE loop or high capacity transport UNE facilities in (for loops) and between (for transport) such Wire Centers will continue to be treated as UNEs until those facilities are added to a Commission-Approved Wire Center List in a future filing.
- G. Length of Transition Period for Additional Non-Impairment Designations.
 - 1. When the Commission approves additional DS1 and DS3 UNE loop or high capacity transport UNE non-impairment designations as described in this Section VI, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the addition to the Commission-approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service pursuant to the terms of the applicable interconnection agreement.
 - 2. When the Commission approves additional Dark Fiber transport non-impairment Designations as described in this Section VI, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-approved Wire Center List to transition the applicable Non-Impaired Facilities, pursuant to the terms of the applicable interconnection agreement to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such a change.
- H. Rate During Transition Period for Additional Non-Impairment Designations
 - 1. During the Transition Periods identified in Section VI (G), facilities subject to the transition will be provided at a rate equal to 115% of the UNE rates applicable as of the applicable effective date. The 115% transitional rate for additional Non-Impaired Facilities will be applied to

CLEC bills as a manual adjustment on the following bill cycle. The bill adjustment will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) per Billing Account Number (BAN) with an effective bill date as of the applicable effective date.

2. The non-recurring conversion charge is addressed in Section IV.

VII. OTHER PROVISIONS

- A. This Settlement Agreement is the entire agreement between the Parties regarding resolution of the underlying dispute and this Settlement Agreement may be modified only if agreed to in writing, signed by the Parties and approved by the Commission. This Settlement Agreement is not intended to alter or amend the existing interconnection agreements between Qwest and Joint CLECs. To the extent that any term of this Settlement Agreement would affect interconnection agreement terms, interconnection agreement terms will not be dealt with in the Settlement Agreement but will instead be included in filed and approved interconnection agreements or amendments as described in subparagraphs 1-3 of this Section VII(A):
 - 1. Attachments B, C, and D to this Settlement Agreement contain interconnection agreement ("ICA") provisions regarding issues addressed in this Settlement Agreement. The CLECs that are part of the Joint CLECs are at varying stages of ICA negotiations with Qwest. Qwest and the Joint CLECs agree that the ICA language will be addressed as follows:
 - a. Covad, Integra, POPP.Com, and XO have each executed TRRO ICA amendments with Qwest. Qwest, Covad, Integra, POPP.Com and XO agree to amend their interconnection agreements with Qwest using the amendment terms in Attachment B.
 - b. Eschelon and Qwest have executed a Bridge Agreement and are currently parties to ICA arbitrations. Qwest and Eschelon agree that, in each arbitration, the language in Attachment C will be added as closed (i.e., agreed upon) language to the interconnection

agreement that is submitted in the compliance filing for Commission approval in each state. Inserting this language will not re-open or modify any closed language in the proposed interconnection agreement. Eschelon agrees to add the closed language reflected in Attachment C to the negotiations multi-state interconnection agreement negotiations draft within ten (10) business days of the Effective Date of this Settlement Agreement.

- c. McLeodUSA and TDSM have not agreed to or executed TRRO Amendments to their current ICAs and are in negotiations with Qwest pursuant to Section 252 of the federal Act. The timeframes of Section 252 apply to those interconnection agreement negotiations. Qwest, McLeodUSA and TDSM agree to execute an amendment to their existing ICAs to include the amendment terms in Attachment D. Qwest, McLeodUSA and TDSM reserve their rights as to TRRO and ICA terms not set forth in Attachment D including terms with respect to the rates, terms and backbilling for the time period from March 10, 2006 to the time McLeodUSA and TDSM convert their existing base of Non-Impaired Facilities as well as the consequences for any non-conversion (or "Failure to Convert") after the end of a transition period.
- 2. Qwest, Covad, Integra, POPP.Com, and XO agree to execute the ICA terms in Attachment B within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.
- 3. McLeodUSA and TDSM agree to execute the ICA terms in Attachment D within ten (10) business days of the Effective Date of this Settlement Agreement, and Qwest agrees to file the executed amendments for Commission approval within thirty (30) days of the Effective Date of this Settlement Agreement.
- 4. Qwest agrees to make the terms in Exhibits B, C, and D available to other

requesting CLECs for inclusion of one or the other in their interconnection agreements, consistent with Section 252(i) of the Act, as well.

- B. This Settlement Agreement is a settlement of a controversy. No precedent is established by this Settlement Agreement, whether or not approved by Commissions. The Settlement Agreement is made only for settlement purposes and does not represent the position that any Party would take if this matter is not resolved by agreement. This Settlement Agreement may not be used as evidence or for impeachment in any future proceeding before a Commission or any other administrative or judicial body, except for future enforcement of the terms of this Settlement Agreement after approval.
- C. If, prior to approval, any Commission modifies any portion of this Settlement Agreement, the Parties expressly acknowledge that any Party may terminate this Settlement Agreement as to that particular state.
- D. Qwest has entered into ICA Amendments (See, e.g., Section 2.6 of the Qwest-Covad TRRO Amendment; Section 2.8.5 of the Qwest-Integra TRRO Amendment, and Section 2.9.4 of the Qwest-XO TRRO Amendment.) under which Qwest has agreed that facilities previously converted to (or ordered as) non-UNEs based on initial Owest non-impairment designations will be converted back to UNEs at no charge with corresponding refunds to the CLECs for nonrecurring charges and the difference between the applicable non-UNE and UNE recurring rates after a determination that the relevant Wire Center did not meet the FCC's non-impairment criteria. Qwest agrees herein that these provisions and all the conversion and refund terms therein will apply to any of the relevant Joint CLEC's facilities previously designated by Qwest as non-impaired, but not identified as non-impaired in Attachment A to this Settlement Agreement. For any refunds that are due and owing pursuant to such provisions as of the Effective Date of this Settlement Agreement, Owest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of this Settlement Agreement.
- E. For those non-impairment designations that have an effective date of July 8, 2005 under this Settlement Agreement, CLECs that have already been back-billed to March 11, 2005 for those facilities shall receive from Qwest a lump sum credit equal to the amount back-billed

specifically for the period from March 11, 2005 to July 8, 2005.

MULTI-STATE

SETTLEMENT AGREEMENT REGARDING WHE CENTER DESIGNATIONS AND RELATED ISSUES.

Dated this X44 day of June, 2007.

Qwest-Corporation

Perry W. Hooks, Jr.
Director — Product & Warkering
1801 California, Street, Suite 2150
Denver, CO 80202

MULTI-STATE SETTLEMENT AGREEMENT REGARDING WIRE CENTER DESIGNATIONS AND RELATED ISSUES

Dated this 22 nd day of June, 2007.

Covad Communications Company and DIECA Communications, Inc.

By: James Kirkland

Its: Executive Vice-President, Strategic Development

and General Counsel

MULTI-STATE SETTLEMENT AGREEMENT REGARDING WIRE CENTER DESIGNATIONS AND RELATED ISSUES

Dated this _____day of June, 2007.

XO Communications Services, Inc.

Heather B. Gold

SVP - External Affairs

MULTI-STATE SETTLEMENT AGREEMENT REGARDING WIRE CENTER DESIGNATIONS AND RELATED ISSUES

Dated this 13th day of June, 2007.

McLeodUSA Telecommunications Services, Inc.

William A. Haás

Vice President & Deputy General Counsel

1 Martha's Way Hiawatha, Iowa 52233

(319) 790-7295

Eschelop

EVP, General Counsel, Secretary, Eschelon Telecom, inc. 730 Second Avenus S., Suite 980 Minneapolis, MN 65402

TRRO - Non-impaired Wire Centers

															-05	-05, DS3-L 30+ED									-05	-05								-05				
Date	11-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	1-Mar-05	11-Mar-05	11-Mar-05	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05, DS3-L 30+ED	11-Mar-05	Tier 1 - 11-Mar-05, DS3-L 30+ED	11-Mar-05	11-Mar-05	8-Jul-05	11-Mar-05	8-Jul-05	8-Jul-05	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05	Tier 2 - 11-Mar-05, Tier 1 - 8-Jul-05	11-Mar-05	11-Mar-05	8-Jul-05	11-Mar-05	11-Mar-05	11-Mar-05	11-Mar-05	Fier 2 - 11-Mar-05, Tier 1 - 8-Jul-05	11-Mar-05	11-Mar-05	1-Mar-05	10 01
Non-impaired Elements	DS1 and DS3 Transport	DS3 Transport	DS1 and DS3 Transport	_		DS1 and DS3 Transport 11		JS3 Loops 1	DS1 and DS3 Transport			DS3 Transport		DS1 and DS3 Transport 11	DS1 and DS3 Transport Tie	DS1 and DS3 Transport; DS3 Loops Tie			DS1 and DS3 Transport; DS3 Loops 11		DS3 Transport	OS3 Loops	DS3 Transport	DS3 Transport	DS1 and DS3 Transport Tie	sport					DS1 and DS3 Transport; DS3 Loops 11	_	DS1 and DS3 Transport; DS3 and DS1 Loops 11	DS1 and DS3 Transport Tie				1 000
Non-impairment Classification	Tier 1	Tier 2	Tier 1	Tier 1, DS3	Tier 1, DS3	Tier 1	Tier 2	Tier 1, DS3	Tier 1	Tier 2	Tier 2	Tier 2	Tier 2	Tier 1	Tier 1	Tier 1, DS3	Tier 1	Tier 1, DS3	Tier 1, DS3	Tier 2	Tier 2	Tier 1, DS3	Tier 2	Tier 2	Tier 1	Tier 1	Tier 2	Tier 2	Tier 2	Tier 2	Tier 1, DS3	Tier 2	Tier 1, DS3, DS1	Tier 1	Tier 1	Tier 2	Tier 2	
CLLI Code	TEMPAZMC	MESAAZMA	PHNXAZEA	PHNXAZMA	PHNXAZNO	PHNXAZNE	SCDLAZMA	TEMPAZMA	SCDLAZTH	TCSNAZMA	ENWDCOAB	ARVDCOMA	AURRCOMA	BLDRCOMA	DNVRCOCH	CLSPCOMA	DNVRCOCP	DNVRCOEA	DNVRCOMA	DNVRCOSO	DNVRCOSE	DNVRCODC	LKWDCOMA	NGLNCOMA	CLSPCOPV	DNVRCOSL	CRYSMNCR	EAGNMNLB	EDPRMNEP	MPWDMNMA	STPLMNMK	MPLSMN07	MPLSMNDT	BLTNMNNO	GLVYMNOR	ROCHMNRO		000000000000000000000000000000000000000
Wire center	McClintock	Mesa	Phoenix East	Phoenix Main	Phoenix North	Phoenix Northeast	Scottsdale Main	Тетре	Thunderbird	Tucson Main	Aberdeen	Arvada	Aurora	Boulder	Capitol Hill	Colo. Springs Main	Curtis Park	Denver East	Denver Main	Denver South	Denver Southeast	Dry Creek	Lakewood	Northglenn	Pikeview	Sullivan	Crystal	Eagan-Lexington	Eden Prairie	Maplewood	St. Paul Market	Mpls 7th Av.	Mpls Downtown	Normandale	Orchard	Rochester	St. Cloud	1
 State	ΑZ										8																Z Z											_

6.13.2007

TRRO - Non-impaired Wire Centers

1	Wire center	CLLI Code	Non-impairment Classification	Non-impaired Elements	Date
Bend		BENDOR24	Tier 2	DS3 Transport	11-Mar-05
Euger	Eugene 10th Av.	EUGNOR53	Tier 1	DS1 and DS3 Transport	11-Mar-05
Medford	ırd	MDFDOR33	Tier 2	DS3 Transport	11-Mar-05
Portla	nd Alpine	PTLDOR11	Tier 2	DS3 Transport	11-Mar-05
Portie	Portland Belmont	PTLDOR13	Tier 2	DS3 Transport	11-Mar-05
Port	Portland Capitol	PTLDOR69	Tier 1, DS3, DS1	DS1 and DS3 Transport; DS3 and DS1 Loops	11-Mar-05
Saler	n Main	SALMOR58	Tier 1	DS1 and DS3 Transport	11-Mar-05
Murra	Murray	MRRYUTMA	Tier 1	DS1 and DS3 Transport	11-Mar-05
ogd	an Main	OGDNUTMA	Tier 1	DS1 and DS3 Transport	11-Mar-05
Prov	Provo	PROVUTMA	Tier 1	DS1 and DS3 Transport	11-Mar-05
Salt	Salt Lake City Main	SLKCUTMA	Tier 1, DS3	DS1 and DS3 Transport; DS3 Loops	11-Mar-05
Salt	Lake City South	SLKCUTSO	Tier 1	DS1 and DS3 Transport	Tier 1 - 8-Jul-05
Salt	Salt Lake City West	SLKCUTWE	Tier 1	DS1 and DS3 Transport	Tier 2 - 11-Mar-05, Tier 1 8-Jul-05
Belle	evue Glencourt	BLLVWAGL	Tier 2	DS1 and DS3 Transport	11-Mar-05
Belle	view Sherwood	BLLVWASH	Tier 1	DS1 and DS3 Transport	11-Mar-05
Ken	Kent O'Brien	KENTWAOB	Tier 1	DS1 and DS3 Transport	11-Mar-05
O	ipia Whitehall	OLYMWA02	Tier 1	DS1 and DS3 Transport	11-Mar-05
Seal	tle Atwater	STTLWA05	Tier 1	DS1 and DS3 Transport	8-Jul-05
Sea	tte Campus	STTLWACA	Tier 1	DS1 and DS3 Transport	8-Jul-05
Sea	tte Cherry	STTLWACH	Tier 2	DS3 Transport	11-Mar-05
Seal	tle Dumwamish	STTLWADU	Tier 2	DS3 Transport	8-Jul-05
Sea	Seattle East	STTLWA03	Tier 1	DS1 and DS3 Transport	11-Mar-05
Seat	tle Elliott	STTLWAEL	Tier 1	DS1 and DS3 Transport	11-Mar-05
Seal	Seattle Main	STTLWA06	Tier 1, DS3, DS1	DS1 and DS3 Transport; DS3 and DS1 Loops	11-Mar-05
Spol	Spokane Riverside	SPKNWA01	Tier 1	DS1 and DS3 Transport	11-Mar-05
Taco	Tacoma Fawcett	TACMWAFA	Tier 2	DS3 Transport	11-Mar-05

DS1Transport circuits provided by Qwest that originate in a "Tier 1" wire center and terminate in a "Tier 1" wire center are considered non-impaired.

DS3 Transport circuits provided by Qwest that originate in a "Tier 1" or "Tier 2" wire center and terminate in a "Tier 1" or "Tier 2" wire center are considered non-impaired.

DS1 loops provided by Qwest that reside in a wire center classified as "DS1 Loops" are considered to be non-impaired.

DS3 loops provided by Qwest that reside in a wire center classified as "DS3 Loops" are considered to be non-impaired.

30 days + ED = 30 days after Commission Order approving Settlement Agreement with Attachment A

6.13,2007

ATTACHMENT B

Triennial Review Remand Order ("TRRO") Wire Center Amendment to the Interconnection Agreement between Qwest Corporation and [insert CLEC] for the State of [Insert State]

This is an Amendment ("Amendment") to reflect the results of certain Wire Center Dockets in the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and [insert CLEC] ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties."

RECITALS

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to as the "Agreement") for services in the state of [insert state] which was approved by the [enter state commission] Commission ("Commission") on [insert date] as referenced in Docket No. [insert docket number]; and

WHEREAS, the Federal Communications Commission ("FCC") issued its Report and Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 and 98-147 (effective October 2, 2003) ("TRO"); and, on February 4, 2005, the FCC released the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand (effective March 11, 2005) (Triennial Review Remand Order) (FCC 04-290) ("TRRO"); and

WHEREAS the Parties executed an amendment to the Agreement incorporating terms of the TRRO on [insert date] ("TRRO Amendment"); and

WHEREAS, on or about February 15, 2006, certain CLECs (collectively referred to as "Joint CLECs"), including in some states CLEC, filed requests with the state commissions in Arizona, Colorado, Minnesota, Oregon, and Utah asking that the state commissions, in accordance with the TRRO, develop and approve a list of non-impaired wire centers and a process for future updates of the wire center list; and

WHEREAS, the aforementioned state Commissions opened the following dockets in response to these filings: Arizona (Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (Docket No. UM 1251), and Utah (Docket No. 06-049-40);

WHEREAS, the Washington Utilities and Transportation Commission (WUTC) investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the TRRO on local competition; and

WHEREAS, on March 3, 2006, Qwest also petitioned for a Commission investigation and expedited proceeding to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues; and bind all CLECs; and

WHEREAS, the Parties wish to amend the Agreement to reflect certain terms resulting from the publicly filed settlement of issues in the Wire Center Dockets ("Settlement Agreement") and agree to do so under the terms and conditions contained in this Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Amendment Terms

I.0 DEFINITIONS

The Agreement, including specifically Section 1.0 (Definitions) of the TRRO Amendment to the Agreement, is amended to add the following definitions:

"Commission-Approved Wire Center List" means a list approved by the Commission in a Wire Center Docket(s) that identifies DS1 and DS3 Unbundled Loop facilities that are non-impaired and, regarding DS1, DS3, and Dark Fiber unbundled transport facilities, identifies non-impairment designations based on Wire Center Tier Designation(s).

"Non-Impaired Facilities" are those network elements identified in an applicable FCC order as no longer available as unbundled network elements ("UNEs") under 47 U.S.C. § 251(c)(3) as reflected in this Agreement based on non-impairment or tier designations and that have been reviewed and approved by the Commission using the process and methodology ordered in a Wire Center Docket.

"Non-Impaired Wire Center" is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

STATE SPECIFIC - ARIZONA

"Wire Center Docket" means Commission Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091 entitled "In the Matter of the Application of DIECA Communications DBA Covad Communications Company, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc., Mountain Telecommunications, Inc., XO Communications Services, Inc. and Qwest Corporation Reguest for Commission

Process to Address Key UNE Issues Arising from Triennial Review Remand Order, Including Approval of Qwest Wire Center Lists. (AZ Wire Centers)," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - COLORADO

"Wire Center Docket" means Commission Docket No. 06M-080T entitled "In The Matter Of The Joint Competitive Local Exchange Carriers' Request Regarding The Status Of Impairment In Qwest Corporation's Wire Centers And The Applicability Of The Federal Communications Commission's Triennial Review Remand Order," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - MINNESOTA .

"Wire Center Docket" means Commission Docket Nos. 'P-5692, '5340, 5643, 5323, 465, 6422/M-06-211 entitled, "In the Matter of CLECS," Request for Commission Approval of ILEC Wire Center Impairment Analysis," and P-5692, 5340, 5643, 5323, 465, 6422/M-06-685 entitled "In the Matter of a Commission Investigation Identifying, Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loops or Transport LINEs at Cost-Based Rates," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - OREGON

"Wire Center Docket" means Commission Docket No. UM 1251 entitled. "In the Matter of COVAD COMMUNICATIONS COM PANY; ESCHELON TELECOM OF OREGON, INC.; INTEGRA TELECOM OF OREGON, INC.; MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. Request for Commission Approval of Non-Impairment Wire Center List," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - UTAH

"Wire Center Docket" means Commission Docket No. 06-049-40 entitled "In the Matter of the Investigation into Owest Wire Center Data," and any successor or separate Commission docket in which Owest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - WASHINGTON

"Wire Center Docket" means Commission Docket No. UT-053025 entitled "In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's

Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved wire center list, and the Commission approves addition of wire center(s) to the list.

2.0 Unbundled Network Elements (UNE) General

The Agreement, including specifically Section 2.0 (Unbundled Network Elements General) of the TRRO Amendment to the Agreement, is amended as follows:

2.0.A Whether a high capacity loop or high capacity transport UNE is unavailable, and the date upon which it becomes unavailable, based on non-impairment wire center designations have been or will be determined by the Commission in a Wire Center Docket. The Parties will follow any procedures established by the Commission in the Wire Center Docket with respect to exchange of data and Confidential Information and updating the Commission-Approved Wire Center List. For Non-Impaired Facilities identified using the initial Commission-Approved Wire Center List, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the order would be restricted based on the Wire Center designations identified on the applicable Commission-Approved Wire Center List. Regarding ordering after any additions to the initial Commission-Approved Wire Center List, see Section 2.0.F of this Amendment.

2.0.A.1 Section 2.3 of the TRRO Amendment is hereby replaced with the following language in these Sections 2.3, 2.3.1 and 2.3.2:

For Covad:

"2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005 (except as provided in Sections 2.3.1 and 2.3.2 below), for the time period for which the facilities were in place for existing Non-Impaired DS1 Loop and Transport, DS3 Loop and Transport, Dark Fiber Loop and Transport and Mass Market Switching Services pursuant to Transition rate increases identified in Sections 3.1.1.2, 3.1.2.2, 3.1.5.1, 4.1.1.2, 4.1.2.2, 4.1.10.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

For Integra and POPP.Com:

"2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005 (except as provided in Sections 2.3.1 and 2.3.2 below), for the time period for which the facilities were in place for existing Non-Impaired DS1 Loop and Transport, DS3 Loop and Transport, Dark Fiber Loop and Transport and Mass Market Switching Services pursuant to Transition rate increases identified in Sections 3.1.1.2, 3.1.2.2, 3.1.5.1, 4.1.1.2, 4.1.2.2, 4.1.7.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

For XO:

- "2.3 After execution of this Amendment, Qwest shall back bill the FCC ordered rate increases to March 11, 2005 (except as provided in Sections 2.3.1 and 2.3.2 below), for the time period for which the facilities were in place for existing Non-Impaired DS1 Loop and Transport, DS3 Loop and Transport, Dark Fiber Loop and Transport and Mass Market Switching Services pursuant to Transition rate increases identified in Sections 3.1.1.2, 3.1.2.2, 3.1.5.1, 4.1.1.2, 4.1.2.2, 4.1.7.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties. Such back billed amounts shall appear on the Charges and Credits section of the invoice and those amounts shall not be subject to billing measurements, interest or penalties. Payment for the back billed amounts will be due thirty (30) days after the date of the invoice containing such back billed amounts in the Charges and Credits section.
 - **2.3.1** July 8, 2005: The Effective Date of Non-Impairment Designations filed in 2005 after Qwest's initial February 18, 2005 filing and identified in the final column of Attachment A shall be July 8, 2005.
 - 2.3.2 Thirty (30) Days After the Effective Date of the Settlement Agreement in the Wire Center Docket: The Effective Date of Non-Impairment Designations for the Denver East and Colorado Springs Main Wire Centers shall be 30 days following the Effective Date of the Commission order approving the Settlement Agreement in the Wire Center Docket."
- 2.0.B Upon receiving a request for access to a high capacity loop or high capacity transport UNE pursuant to Section 2.0 of the TRRO Amendment, Qwest must immediately process the request. Qwest shall not prevent order submission and/or order processing (such as via a system edit, or by requiring affirmation of the self-certification letter information through remarks in the service request, or through other means) for any such facility, unless the Parties agree otherwise in an amendment to the Agreement. Regarding ordering with respect to the initial Commission-Approved Wire Center List, see Section 2.0.A, and regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 2.0.F. For changes of law, the Parties agree that the change of law provisions contained in the interconnection agreement between the Parties will apply.
- 2.0.C Intentionally Left Blank.
- 2.0.D For high capacity loops and high capacity transport UNEs, Qwest will for a period of at least three (3) years from the effective date of a Commission order approving the Settlement Agreement in a Wire Center Docket, assess an effective net non-recurring charge of \$25 for each facility converted from a UNE to an alternative service arrangement, as shown in Exhibit A to this Amendment. Qwest may assess a non-recurring conversion charge in excess of \$25 so long as Qwest provides a clearly identified lump sum credit within three (3) billing

cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable. Qwest shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.

- 2.0.D.1 The Parties may disagree as to the amount of the applicable non-recurring charge after three years from the Effective Date of the Settlement Agreement, and each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Agreement precludes a Party from addressing charges after three years from the Effective Date of the Settlement Agreement. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties and reflected in an amendment to the Agreement.
- 2.0.E For high capacity loops and high capacity transport UNEs, Qwest will also provide a clearly identified lump sum credit of \$25 per converted facility to CLEC, if CLEC has converted Non-Impaired Facilities pursuant to the TRRO before the effective date of a Commission order approving the Settlement Agreement in the Wire Center Docket and paid a \$50 non-recurring conversion charge. Qwest will include that disconnected circuit in the lump-sum credit described above if the CLEC provides: (1) the circuit ID of the disconnected circuit; (2) the BAN number on which the disconnected circuit was billed; and (3) the BAN number to which the CLEC would like the credit applied. Once the CLEC has provided this information, Qwest will provide the reimbursement credit as set forth herein. A CLEC will not be required to provide a copy of the disconnection order as a condition of including the disconnected circuit in the lump sum credit provided under this Paragraph.
- 2.0.F Additional Non-Impaired Wire Centers. When Qwest files a request(s) to add additional Wire Center(s) to the Commission-Approved Wire Center List, Qwest will follow the procedures for making such requests approved by the Commission in the Wire Center Docket. When additional Qwest Wire Center(s) meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order as reflected in the Agreement and the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, the terms of this Section will apply to facilities subject to the transition based on the addition(s) to the Commission-Approved Wire Center List. Fifteen (15) Days after Commission-approval of addition(s) to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. Qwest and CLEC will work together to identify those circuits impacted by such change.
 - 2.0.F.1 Length of Transition Period for Additional Non-Impairment Designations.
 - 2.0.F.1.1 When the Commission approves additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations as described in Section 2.0.F, CLEC will have ninety

(90) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service.

2.0.F.1.2 When the Commission approves additional Dark Fiber transport non-impairment Designations as described in Section 2.0.F, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition to an alternative arrangement. Qwest and CLEC will work together to identify those circuits impacted by such a change.

Integra (¶2.8.4), POPP.Com (¶2.8.4) and Covad (¶2.5.4):

2.0.F.1.2.1 In addition to the changes required by Paragraph 2.0.F above, the last sentence of the paragraph entitled "Additional Non-Impaired Wire Centers" of the TRRO Amendment is hereby modified to refer to back billing to the ninety-first (91st) Day "for additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations" and to add "and the one-hundred and eighty first (181st) Day for additional Dark Fiber transport non-impairment designations."

Integra (2.8.4):

2.0.F.1.2.2 The Parties specifically agree that the fifth (5th) sentence in Paragraph 2.8.4 of Integra's TRRO Amendment will remain in full force and effect. That sentence states: "If CLEC makes a commercially reasonable best effort to transition such services and if extraordinary circumstances arise the Parties agree to discuss an alternate time frame."

2.0.F.2 Rate During Transition Period for Additional Non-Impairment Designations.

2.0.F.2.1 For a ninety (90) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

- 2.0.F.2.2 For a one-hundred and eighty (180) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any Dark Fiber Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.
- 2.0.F.2.3 The 115% rate described in Sections 2.0.F.2.1 and 2.0.F.2.2 will be applied to CLEC bills on the following bill cycle, and may be applied as a manual adjustment. Any manual bill adjustment for the time period for which the facilities were in place will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) identification number per Billing Account Number (BAN) with an effective bill date as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.
- 2.0.F.2.4 The non-recurring conversion charge is addressed in Section 2.0.D of this Amendment.
- 2.0.F.3 Data. Qwest will file supporting data with the Commission when filing a request to obtain additional non-impaired designations added to the Commission-Approved Wire Center List. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective agreement/order to CLEC if CLEC has signed the applicable protective agreement/order (or is subject to any applicable standing protective order put in place by the Commission).
 - 2.0.F.3.1 If Qwest relies upon Fiber-Based Collocators for its proposed non-impairment designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.
 - 2.0.F.3.2. If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.
- 2.0.F.4 Methodology. The Parties agree to use the methodology for non-impairment or tier designations adopted by the Commission in the Wire Center Docket.

For Covad:

2.0.G Section 2.6 is modified to add the following subpart:

"2.6.1 For any refunds that are due and owing pursuant to Section 2.6, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of the Settlement Agreement in the Wire Center Docket.

For Integra and POPP.Com:

2.0.G Section 2.8.5 is modified to add the following subpart:

"2.8.5.1 For any refunds that are due and owing pursuant to Section 2.8.5, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of the Settlement Agreement in the Wire Center Docket.

For XO:

2.0.G Section 2.9.4 is modified to add the following subpart:

"2.9.4.1 For any refunds that are due and owing pursuant to Section 2.9.4, Qwest will refund the applicable qualifying Joint CLEC no later than sixty (60) days after the Effective Date of the Settlement Agreement in the Wire Center Docket.

II. Effective Date

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties agree to implement the provisions of this Amendment upon execution.

III. Further Amendments

The provisions of this Amendment apply notwithstanding anything in the TRRO Amendment that may be to the contrary. Except as modified herein, the provisions of the Agreement, including the TRRO Amendment, shall remain in full force and effect. Except as provided in the Agreement, this Amendment may not be further amended or altered, and no waiver of any provision thereof shall be effective, except by written instrument executed by an authorized representative of both Parties.

IV. Entire Agreement

Other than the publicly filed Agreement, its Amendments, and the publicly filed Settlement Agreement in the Wire Center Docket, Qwest and CLEC have no agreement or understanding, written or oral, relating to the subject of this Amendment. The publicly filed Settlement Agreement in the Wire Center Docket is not intended to alter or amend the Agreement.

The Parties, intending to be legally bound, have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Signature Blocks

ATTACHMENT C to

Triennial Review Remand Order ("TRRO") Wire Center Multi-State Settlement Agreement

ATTACHMENT C & MULTI-STATE DRAFT

For insertion in Section 4 ("Definitions") in alphabetical order, with gray shading indicating state-specific language (to be inserted as applicable per each state):

"Commission-Approved Wire Center List" means a list approved by the Commission in a Wire Center Docket(s) that identifies DS1 and DS3 Unbundled Loop facilities that are non-impaired and, regarding DS1, DS3, and Dark Fiber unbundled transport facilities, identifies non-impairment designations based on Wire Center Tier Designation(s).

"Non-Impaired Facilities" are those network elements identified in an applicable FCC order as no longer available as unbundled network elements ("UNEs") under 47 U.S.C. §251(c)(3) as reflected in this Agreement based on non-impairment or tier designations and that have been reviewed and approved by the Commission using the process and methodology ordered in a Wire Center Docket.

STATE SPECIFIC - ARIZONA

Wire Center Docket' means Commission Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-04302A-D6-0091; T-03406A-06-0091; T-03432A-D6-0091; and T-04051B-06-0091 entitled in the Matter of the Application of DIECA Communications DBA Covad Communications Company, Eschelon Telecom of Arizona Inc., McLeodUSA Telecommunications Services, Inc. Mountain Telecommunications, Inc., XO Communications Services, Inc. and Qwest Corporation Request for Commission Process to Address Key UNE Issues Arising from Triennial Review Remand Order, Including Approval of Qwest Wire Center Lists (AZ Wire Centers), and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - COLORADO

"Wire Center Docket" means Commission Docket No. 06M-080T entitled "In The Matter Of The Joint Competitive Local Exchange Carriers' Request Regarding The Status Of Impairment In Qwest Corporation's Wire Centers and The Applicability Of The Federal Communications Commission's Triennial Review Remand Order," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - MINNESOTA

"Wire Center Docket" means Commission Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 entitled "In the Matter of CLECS" Request for Commission Approval of ILEC Wire Center Impairment Analysis." and P-5692, 5340, 5643, 5323, 465, 6422/M-06-685 entitled "In the Matter of a Commission Investigation Identifying Wire Centers in Which Owest Corporation Must Offer High-Capacity Loops or Transport UNEs at Cost-Based Rates," and any successor or separate Commission docket in which Owest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - OREGON

"Wire Center Docket" means Commission Docket No. UM 1251 entitled. "In the Matter of COVAD COMMUNICATIONS COM-PANY: ESCHELON TELECOM OF OREGON, INC., INTEGRA TELECOM OF OREGON, INC., MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., and XO COMMUNICATIONS SERVICES, INC. Request for Commission, Approval of Non-Impairment Wire Center List," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired, wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - UTAH

"Wire Center Docket" means Commission Docket No. 06-049-40 entitled "In the Matter of the Investigation into Owest Wire Center Data," and any successor or separate Commission docket in which Owest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - WASHINGTON -

"Wire Center Docket" means Commission Docket No. UT-053025 entitled "In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission approves addition of wire center(s) to the list.

SECTIONS 9.1.13 - 9.1.15 - For insertion in Section 9 ("UNEs"), in the location indicated by section number:

9.1.13 To submit an order to obtain a High Capacity Loop or high capacity

transport UNEs, CLEC must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI of the Triennial Review Remand Order as reflected in this Agreement and that it is therefore entitled to unbundled access to the particular Unbundled Network Elements sought pursuant to section 251(c)(3). Before placing the first such order under this Agreement, CLEC shall provide its self-certification through a letter sent to Qwest, or in another form to which the Parties mutually agree in writing. The applicable UNE rate(s) in Exhibit A will apply to UNEs and UNE Combinations.

- 9.1.13.1 CLEC will maintain appropriate records to support the self-certification described in Section 9.1.13. See Section 9.23.4 for Service Eligibility Criteria for High Capacity EELs.
- 9.1.13.2 Qwest has a limited right to audit compliance with the Service Eligibility Criteria for High Capacity EELs, as described in Section 9.23.4.3. Notwithstanding any other provision of this Agreement, there is no other auditing requirement for self-certification, as CLEC certifies only to the best of its knowledge.
- 9.1.13.3 Whether a High Capacity Loop or high capacity transport UNE is unavailable, and the date upon which it becomes unavailable, based on non-impairment wire center designations have been or will be determined by the Commission in a Wire Center Docket. The Parties will follow any procedures established by the Commission in the Wire Center Docket with respect to exchange of data and Confidential Information and requests for additions to the Commission-Approved Wire Center List. For non-impaired facilities identified using the initial Commission-Approved Wire Center List, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the order would be restricted based on the Wire Center designations identified on the applicable Commission-Approved Wire Center List. Regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 9.1.14.4. CLEC will transition such UNEs impacted by the Commission-Approved Wire Center List as described in Section 9.1.14.
- 9.1.13.4 Upon receiving a request for access to a High Capacity Loop or high capacity transport UNE pursuant to Section 9.1.13, Qwest must immediately process the request. Qwest shall not prevent order submission and/or order processing (such as via a system edit, or by requiring affirmation of the information in the self-certification letter through remarks in the service request, or through other means) for any such facility on non-impairment grounds, unless the Parties agree otherwise in an amendment to this Agreement. Regarding ordering with respect to the initial Commission-Approved Wire Center List, see Section 9.1.13.3, and regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 9.1.14.4. Regarding changes in law, see Section 2.2.
 - 9.1.13.4.1 To the extent that Qwest seeks to challenge access to any such UNE(s), it subsequently can raise that issue through the Dispute resolution procedures in Section 5.18 of this Agreement. Regarding Service Eligibility Criteria for High Capacity EELs, see Sections 9.23.4.2.1.3 and 9.23.4.3.

9.1.13.4.1.1 If Qwest seeks to challenge any such UNEs, it will provide written notice to CLEC of its request for Dispute resolution.

9.1.13.4.1.2 If Qwest seeks to challenge any such UNEs, it will also provide CLEC with data to support its claim.

9.1.13.4.1.2.1 For Wire Centers: This may, in some cases, be limited to providing a copy of a Commission Approved Wire Center List, while in other cases the data may be more extensive (such as data that allows CLEC to identify the disputed circuits and other data upon which Qwest relies). In the event of such a dispute, CLEC will also provide Qwest the data upon which it relies for its position that CLEC may access the UNE.

9.1.13.4.1.2.2 For Caps:

9.1.13.4.1.2.2.1 With respect to disputes regarding the caps described in Sections 9.2 and 9.6.2.3, data that allows CLEC to identify all CLEC circuits relating to the applicable Route or Building [including if available circuit identification (ID), installation purchase order number (PON), Local Service Request identification (LSR ID), Customer Name/Service Name, installation date, and service address including location (LOC) information (except any of the above, if it requires a significant manual search), or such other information to which the Parties agree]. In the event of such a dispute, CLEC will also provide Qwest the data upon which it relies for its position that CLEC may access the UNE.

9.1.13.4.1.2.2.2 Notwithstanding anything in this Section 9.1.13.4 that may be to the contrary, to the extent that Qwest challenges access to any UNE(s) on the basis that CLEC's access to or use of UNEs exceeds the caps described in Sections 9.2 or 9.6.2.3 because CLEC has ordered more than ten UNE DS1 Loops or more than the applicable number of DS3 Loop circuits or UDIT circuits in excess of the applicable cap on a single LSR (or a set of LSRs submitted at the same time for the same address for which CLEC populates the related PON field to indicate the LSRs are related), Eschelon does not object to Qwest rejecting that

single LSR (or the set of LSRs that meets the preceding description) on that basis. The means by which Qwest will implement rejection of such orders is addressed in Section 9.1.13. Except as provided in this Section 9.1.13.4.1.2.2.2, in all other situations when Qwest challenges access to any UNE(s) on the basis that CLEC's access to or use of UNEs exceeds the caps described in Sections 9.2 or 9.6.2.3, Qwest must immediately process the request and subsequently proceed with the challenge as described in Section 9.1.13.4.1.

- 9.1.13.5 If the Parties agree or it is determined through Dispute resolution that CLEC was not entitled to unbundled access to a particular UNE that is not subject to one of the transition periods described in Section 9.1.14, or the transition period has ended, CLEC will place an order within thirty (30) Days to either disconnect the UNE or convert such UNE to an alternative service arrangement. Back billing for the difference between the rates for UNEs and rates for the Qwest alternative service arrangements will apply no earlier than the later of: (1) the installation date; or (2) the effective date of the TRO or TRRO, whichever is applicable.
 - 9.1.13.5.1 With respect to the caps described in Sections 9.2 and 9.6.2.3, the back billing period described in Section 9.1.13.5 will apply no earlier than the later of: (1) the installation date; or (2) the effective date of the TRO or TRRO, whichever is applicable; unless the Parties agree to a different date or a different date is determined through Dispute resolution.
 - 9.1.13.5.2 For each such facility converted from a UNE to an alternative service arrangement, Qwest will, for at least three (3) years from the effective date in the Wire Center Docket of the initial Commission-Approved Wire Center List, assess an effective net non-recurring charge of \$25 for each such facility converted from a UNE to an alternative service arrangement. Qwest may assess a non-recurring charge in excess of \$25, so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7.
 - 9.1.13.5.2.1 The Parties disagree as to the amount of the applicable non-recurring charge after the three-year period identified in this Section. Each Party reserves all of its rights with respect to the amount of the charges after that date. Nothing in this Agreement precludes a Party from addressing the non-recurring charge after that three-year period. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties, and reflected in an amendment to this Agreement (pursuant to Section 2.2 and/or Section 5.30).

- 9.1.14 Transition periods. A transition period allows CLEC to transition away from use of UNEs where they are not impaired. The transition plans described in this Section apply only to the embedded End User Customer base. During the applicable transition period, CLEC will retain access to the UNE at the terms described in this Section.
 - 9.1.14.1 For a 12-month period beginning on March 11, 2005, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate CLEC paid for the element on June 15, 2004, or (2) 115% of the rate the Commission has established or establishes, if any, between June 16, 2004, and March 11, 2005, for that element.
 - 9.1.14.1.1 Within ninety (90) Days of Commission approval of this Agreement, notwithstanding any other provision in this Agreement, Qwest shall back bill CLEC for such rate adjustment for the time period for which the facilities were in place between March 11, 2005 to March 10, 2006. Such back billing shall not be subject to billing measurements and penalties (as identified in this Agreement) on the grounds that such back billing was not implemented earlier than ninety (90) Days after approval of this Agreement.
 - 9.1.14.2 For an 18-month period beginning on March 11, 2005, any Dark Fiber Loop UNEs and Dark Fiber Dedicated Transport UNEs that CLEC leases from Qwest as of that date shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate CLEC paid for the element on June 15, 2004, or (2) 115% of the rate the Commission has established or establishes, if any, between June 16, 2004, and March 11, 2005, for that element.
 - 9.1.14.2.1 Within ninety (90) Days of Commission approval of this Agreement, notwithstanding any other provision in this Agreement, Qwest shall back bill CLEC for such rate adjustment for the time period for which the facilities were in place between March 11, 2005 to September 10, 2006. Such back billing shall not be subject to billing measurements and penalties (as identified in this Agreement) on the grounds that such back billing was not implemented earlier than ninety (90) Days after approval of this Agreement.
 - 9.1.14.3 Bridge Period from March 11, 2006 until Effective Date of this Agreement.
 - 9.1.14.3.1 Within ninety (90) Days of Commission approval of this Agreement, notwithstanding any other provision in this Agreement, for the period from March 11, 2006 until the Effective Date of this Agreement, Qwest shall back bill retroactive to March

- 11, 2006 (or a later date, if a UNE became unavailable after that date) for the time period for which the facilities were in place and CLEC agrees to pay Qwest pursuant to this Agreement the difference between the UNE rate(s) and the applicable alternate service rate(s) (such as Special Access Service rate(s)) on all Loop and transport UNEs that were no longer required to be offered by Qwest as UNEs beginning March 11, 2006.
- 9.1.14.4 Additional Non-Impaired Wire Centers. When Qwest files a request(s) with the Commission to add additional Wire Center(s) to the Commission-Approved Wire Center List, Qwest will follow the procedures for making such requests adopted by the Commission in the Wire Center Docket. When additional Qwest Wire Center(s) meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order as reflected in this Agreement and the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, the terms of this Section will apply to facilities subject to the transition based on any addition(s) to the Commission-Approved Wire Center List. Fifteen (15) Days after Commission-approval of addition(s) to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. Qwest and CLEC will work together to identify those circuits impacted by such change.
 - 9.1.14.4.1 Transition Periods for additions to the Commission-Approved Wire Center List.
 - 9.1.14.4.1.1 For a ninety (90) Day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.
 - 9.1.14.4.1.2 For a one-hundred and eighty (180) Day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any Dark Fiber Loop UNEs and Dark Fiber Dedicated Transport UNEs that CLEC leases, from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

- 9.1.14.4.1.3 The 115% rate described in Sections 9.1.14.4.1.1 and 9.1.14.4.1.2 will be applied to CLEC bills on the following bill cycle, and may be applied as a manual adjustment. Any manual bill adjustment for the time period for which the facilities were in place will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) identification number per Billing Account Number (BAN) with an effective bill date as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.
- 9.1.14.4.2 Data. Qwest will file supporting data with the Commission when filing a request to obtain additional non-impaired designations added to the Commission-Approved Wire Center List. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective agreement/order to CLEC if CLEC has signed the applicable protective agreement/order (or is subject to any applicable standing protective order put in place by the Commission).
 - 9.1.14.4.2.1 If Qwest relies upon Fiber-Based Collocators for its proposed non-impairment designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.
 - 9.1.14.4.2.2 If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.
- 9.1.14.4.3 Methodology: The Parties agree to use the methodology for non-impairment or tier designations adopted by the Commission in the Wire Center Docket.
- 9.1.14.5 If it is determined by CLEC and Qwest that CLEC's access to or use of UNEs exceeds the caps described in Sections 9.2 and 9.6.2.3, CLEC has thirty (30) Days to convert such UNEs to alternate service arrangements and CLEC is subject to back billing for the difference between rates for the UNEs and rates for the Qwest alternate service arrangements.
- 9.1.14.6 For each such facility converted from a UNE to an alternative service arrangement, Qwest will, for at least three (3) years from the effective date in the Wire Center Docket of the initial Commission-Approved Wire Center List, assess an effective net non-recurring charge of \$25 for each such facility converted from a UNE to an alternative service arrangement. Qwest may assess a non-recurring charge in excess of \$25, so long as Qwest provides a clearly identified lump sum

credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7.

- 9.1.14.6.1 The Parties disagree as to the amount of the applicable non-recurring charge after the three-year period identified in this Section. Each Party reserves all of its rights with respect to the amount of the charges after that date. Nothing in this Agreement precludes a Party from addressing the non-recurring charge after that three-year period. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties, and reflected in an amendment to this Agreement (pursuant to Section 2.2 and/or Section 5.30).
- 9.1.15 If CLEC has not converted or disconnected a UNE facility that the Parties agree, or it is determined in Dispute resolution that the facility, should be converted or disconnected by the end of the applicable transition period described in Sections 9.13 and 9.14, Qwest will convert facilities to month-to-month service arrangements in Qwest's FCC No. 1 Tariff or, for Dark Fiber facilities, begin the disconnect process after reasonable notice to CLEC sufficiently identifying the Dark Fiber facility(ies) to be disconnected. If such a facility is disconnected, the applicable disconnection charge in Exhibit A, if any, will apply. Qwest and CLEC will work together to identify impacted facilities.
 - 9.1.15.1 If Qwest believes or asserts that a particular UNE's availability status has changed, Qwest shall notify CLEC of Qwest's claim and the basis for the claim and upon request, provide sufficient data to enable CLEC to identify and agree upon any impacted facility(ies). If the Parties do not reach agreement, Qwest must continue to provide the UNE to CLEC until the Dispute is resolved. See Section 9.1.14.
 - 9.1.15.2 If Qwest converts a facility to an analogous or alternative service arrangement pursuant to Section 9.1.15, the terms and conditions of this Section 9.1.15.2 will apply.
 - 9.1.15.2.1 For each such facility converted from a UNE to an alternative service arrangement, Qwest will, for at least three (3) years from the effective date in the Wire Center Docket of the initial Commission-Approved Wire Center List, assess an effective net non-recurring charge of \$25 for each such facility converted from a UNE to an alternative service arrangement. Qwest may assess a non-recurring charge in excess of \$25, so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable pursuant to Section 12.7.

9.1.15.2.1.1 The Parties may disagree as to the amount of the applicable non-recurring charge after the three-year period identified in this Section. Each Party reserves all of its rights with respect to the amount of the charges after that date. Nothing in this Agreement precludes a Party from addressing the non-recurring charge after that three-year period. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties, and reflected in an amendment to this Agreement (pursuant to Section 2.2 and/or Section 5.30).

9.1.15.2.2 The Parties will complete the transition of facility(ies) using a seamless process that does not affect the End User Customer's perception of service quality. The Parties will establish and abide by any necessary operational procedures to ensure Customer service quality is not affected by conversions.

ATTACHMENT D Triennial Review Remand Order ("TRRO") Wire Center Amendment to the Interconnection Agreement between Qwest Corporation and [insert CLEC] for the State of [insert State]

This is an Amendment ("Amendment") to reflect the results of certain Wire Center Dockets in the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and [insert CLEQ] ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties."

RECITALS

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to as the "Agreement") for services in the state of [insert state] which was approved by the [enter state commission] Commission ("Commission") on [insert date] as referenced in Docket No. [insert docket number]; and

WHEREAS, the Federal Communications Commission ("FCC") issued its Report and Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 and 98-147 (effective October 2, 2003) ("TRO"); and, on February 4, 2005, the FCC released the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand (effective March 11, 2005) (Triennial Review Remand Order) (FCC 04-290) ("TRRO"); and

WHEREAS the Parties are in negotiations regarding interconnection agreement language addressing terms of the TRRO; and

WHEREAS, on or about February 15, 2006, certain CLECs (collectively referred to as "Joint CLECs"), including in some states CLEC, filed requests with the state commissions in Arizona, Colorado, Minnesota, Oregon, and Utah asking that the state commissions, in accordance with the TRRO, develop and approve a list of non-impaired wire centers and a process for future updates of the wire center list; and

WHEREAS, the aforementioned state Commissions opened the following dockets in response to these filings: Arizona (Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091), Colorado (Docket No. 06M-080T), Minnesota (Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211), Oregon (Docket No. UM 1251), and Utah (Docket No. 06-049-40);

WHEREAS, the Washington Utilities and Transportation Commission (WUTC) investigated Qwest's initial non-impairment list in an existing docket (number UT-053025) established to review the impacts of the TRRO on local competition; and

WHEREAS, on March 3, 2006, Qwest also petitioned for a Commission investigation and expedited proceeding to verify Qwest wire center data, address the nonrecurring conversion charge, establish a process for future updates of the wire center list, address related issues; and bind all CLECs; and

WHEREAS, the Parties wish to amend the Agreement to reflect certain terms resulting from the publicly filed settlement of issues in the Wire Center Dockets ("Settlement Agreement") and agree to do so under the terms and conditions contained in this Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Amendment Terms

1.0 DEFINITIONS

The following definitions apply for purposes of this Amendment:

"Commission-Approved Wire Center List" means a list approved by the Commission in a Wire Center Docket(s) that identifies DS1 and DS3 Unbundled Loop facilities that are non-impaired and, regarding DS1, DS3, and Dark Fiber unbundled transport facilities, identifies non-impairment designations based on Wire Center Tier Designation(s).

"Non-Impaired Facilities" are those network elements identified in an applicable FCC order as no longer available as unbundled network elements ("UNEs") under 47 U.S.C. § 251(c)(3) as reflected in this Agreement based on non-impairment or tier designations and that have been reviewed and approved by the Commission using the process and methodology ordered in a Wire Center Docket.

"Non-Impaired Wire Center" is a Wire Center that the Commission finds meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops, or the loop thresholds identified in CFR 47 §51.319(a)(5)(i) for DS3 Loops, or the Tier 1 or Tier 2 Wire Centers designations as defined in §51.319(e)(3) and that is identified on a Commission-Approved Wire Center List.

STATE SPECIFIC - ARIZONA -----

"Wire Center Docket" means Commission Docket Nos.T-03632A-06-0091; T-03267A-06-0091; T-04302A-06-0091; T-03406A-06-0091; T-03432A-06-0091; and T-01051B-06-0091 entitled "In the Matter of the Application of DIECA Communications DBA Covad Communications Company, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc., Mountain Telecommunications, Inc., XO Communications Services, Inc. and Qwest Corporation Request for Commission Process to Address Key UNE Issues Arising from Triennial Review Remand Order, Including Approval of Qwest Wire Center Lists. (AZ Wire Centers)," and any successor

or separate Commission docket in which Qwest files a request(s) to add additional nonimpaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - COLORADO

"Wire Center Docket" means Commission Docket No. 06M-080T entitled "In The Matter Of The Joint Competitive Local Exchange Carriers' Request Regarding The Status Of Impairment In Qwest Corporation's Wire Centers And The Applicability Of The Federal Communications Commission's Triennial Review Remand Order," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - MINNESOTA

"Wire Center Docket" means Commission Docket Nos P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 entitled "In the Matter of CLECS' Request for Commission Approval of ILEC Wire Center Impairment Analysis." and P-5692, 5340, 5643, 5323, 465, 6422/M-06-685 entitled "In the Matter of a Commission Investigation Identifying Wire Centers in Which Qwest Corporation Must Offer High-Capacity Loops or Transport UNEs at Cost-Based Rates," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - OREGON

"Wire Center Docket" means Commission Docket No. UM 1251 entitled: "In the Matter of COVAD COMMUNICATIONS COM-PANY; ESCHELON TELECOM OF OREGON, INC.; INTEGRA TELECOM OF OREGON, INC.; MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.; And XO COMMUNICATIONS SERVICES, INC.; Request for Commission Approval of Non-Impairment Wire Center List," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired, wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - UTAH

"Wire Center Docket" means Commission Docket No. 06-049-40 entitled "In the Matter of the Investigation into Qwest Wire Center Data," and any successor or separate Commission docket in which Qwest files a request(s) to add additional non-impaired wire center(s) to the Commission-Approved Wire Center List, and the Commission approves addition of wire center(s) to the list.

STATE SPECIFIC - WASHINGTON

"Wire Center Docket" means Commission Docket No. UT-053025 entitled "In the Matter of the Investigation Concerning the Status of Competition and Impact of the FCC's Triennial Review Remand Order on the Competitive Telecommunications Environment in Washington State," and any successor or separate Commission docket in which

Qwest files a request(s) to add additional, non-impaired wire center(s) to the Commission-Approved wire center list, and the Commission approves addition of wire center(s) to the list.

2.0 Unbundled Network Elements (UNE) General

The Agreement is amended as follows:

2.0.A Whether a high capacity loop or high capacity transport UNE is unavailable, and the date upon which it becomes unavailable, based on non-impairment wire center designations have been or will be determined by the Commission in a Wire Center Docket. The Parties will follow any procedures established by the Commission in the Wire Center Docket with respect to exchange of data and Confidential Information and updating the Commission-Approved Wire Center List. For Non-Impaired Facilities identified using the initial Commission-Approved Wire Center List, CLEC will not order an unbundled DS1 or DS3 Loop or an unbundled DS1, DS3 or Dark Fiber transport circuit when the order would be restricted based on the Wire Center designations identified on the applicable Commission-Approved Wire Center List. Regarding ordering after any additions to the initial Commission-Approved Wire Center List, see Section 2.0.F of this Amendment.

2.0.A.1 Effective Dates.

2.0.A.1.1 <u>July 8, 2005</u>: The Effective Date of Non-Impairment Designations filed in 2005 after Qwest's initial February 18, 2005 filing and identified in the final column of Attachment A shall be July 8, 2005.

2.0.A.1.2 Thirty (30) Days After the Effective Date of the Settlement Agreement in the Wire Center Docket: The Effective Date of Non-Impairment Designations for the Denver East and Colorado Springs Main Wire Centers shall be 30 days following the Effective Date of the Commission order approving the Settlement Agreement in the Wire Center Docket.

2.0.A.2 Transition periods. A transition period allows CLEC to transition away from use of UNEs where they are not impaired. The transition plans described in this Section apply only to the embedded End User Customer base. During the applicable transition period, CLEC will retain access to the UNE at the terms described in this Section.

2.0.A.2.1 For a 12-month period beginning on March 11, 2005, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate CLEC paid for the element on June 15, 2004, or (2) 115% of the rate the Commission has

established or establishes, if any, between June 16, 2004, and March 11, 2005, for that element.

- 2.0.A.2.2 For an 18-month period beginning on March 11, 2005, any Dark Fiber Loop UNEs and Dark Fiber Dedicated Transport UNEs that CLEC leases from Qwest as of that date shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate CLEC paid for the element on June 15, 2004, or (2) 115% of the rate the Commission has established or establishes, if any, between June 16, 2004, and March 11, 2005, for that element.
- 2.0.A.2.3 For Non-Impaired Facilities identified using the initial Commission-Approved Wire Center List, CLEC will convert such Non-Impaired Facilities according to the timeframes identified in this Section 2.0.A.2.3. Qwest and CLEC will work together to identify those circuits impacted by such a change.
 - 2.0.A.2.3.1 When the Commission has approved additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations as described in Section 2.0.A for the initial Commission-Approved Wire Center List, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the initial Commission-Approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service.
 - 2.0.A.2.3.2 When the Commission approves additional Dark Fiber transport non-impairment Designations as described in Section 2.0.A for the initial Commission-Approved Wire Center List, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the initial Commission-Approved Wire Center List to transition to an alternative arrangement.
- 2.0.B Upon receiving a request for access to a high capacity loop or high capacity transport UNE, Qwest must immediately process the request. Qwest shall not prevent order submission and/or order processing (such as via a system edit, or by requiring affirmation of the self-certification letter information through remarks in the service request, or through other means) for any such facility, unless the Parties agree otherwise in an amendment to the Agreement. Regarding ordering with respect to the initial Commission-Approved Wire Center List, see Section 2.0.A, and regarding ordering after any additions are made to the initial Commission-Approved Wire Center List, see Section 2.0.F. For changes of law, the Parties agree that the change of law provisions contained in the Agreement will apply.
- 2.0.C Intentionally Left Blank.

- 2.0.D For high capacity loops and high capacity transport UNEs, Qwest will for a period of at least three (3) years from the effective date of a Commission order approving the Settlement Agreement in a Wire Center Docket, assess an effective net non-recurring charge of \$25 for each facility converted from a UNE to an alternative service arrangement, as shown in Exhibit A to this Amendment. Qwest may assess a non-recurring conversion charge in excess of \$25 so long as Qwest provides a clearly identified lump sum credit within three (3) billing cycles that results in an effective net non-recurring charge of \$25. No additional non-recurring charges apply, other than OSS non-recurring charges if applicable. Qwest shall not impose any recurring or nonrecurring OSS charges unless and until the Commission authorizes Qwest to impose such charges and/or approves applicable rates at the completion of appropriate cost docket proceedings.
 - 2.0.D.1 The Parties may disagree as to the amount of the applicable non-recurring charge after three years from the Effective Date of the Settlement Agreement, and each Party reserves all of its rights with respect to the amount of charges after that date. Nothing in this Agreement precludes a Party from addressing charges after three years from the Effective Date of the Settlement Agreement. A different non-recurring charge will apply, however, only to the extent authorized by an applicable regulatory authority, or agreed upon by the Parties and reflected in an amendment to the Agreement.
- 2.0.E For high capacity loops and high capacity transport UNEs, Qwest will also provide a clearly identified lump sum credit of \$25 per converted facility to CLEC, if CLEC has converted Non-Impaired Facilities pursuant to the TRRO before the effective date of a Commission order approving the Settlement Agreement in the Wire Center Docket and paid a \$50 non-recurring conversion charge. Qwest and the CLEC will work together to identify the applicable disconnected/converted circuit to ensure that the disconnected/converted circuit is included in the lumpsum credit described above. CLEC and Qwest agree to promptly provide available documentation necessary to verify the amount to be refunded pursuant to this Paragraph for any such disconnected circuits and will work in good faith in an effort to identify applicable circuits and resolve disputes, if any, through informal means prior to initiating any other rights or remedies. Available documentation may include, for example, copies of bills or identifying information such as circuit identification number, depending on the circumstances. CLEC will not be required to provide a copy of the disconnection order as a condition of including the disconnected circuit in the lump sum credit provided under this Paragraph.
- 2.0.F Additional Non-Impaired Wire Centers. When Qwest files a request(s) to add additional Wire Center(s) to the Commission-Approved Wire Center List, Qwest will follow the procedures for making such requests approved by the Commission in the Wire Center Docket. If the Commission adds the Wire Center(s) to the Commission-Approved Wire Center List, fifteen (15) Days after Commission-approval of addition(s) to that list, CLEC will no longer order impacted High Capacity Loops, high capacity transport UNEs, or Dark Fiber Loop and Dark Fiber Dedicated Transport UNEs in (for loops) or between (for transport) those additional Wire Centers. Qwest and CLEC will work together to identify those circuits impacted by such change.

- 2.0.F.1 Length of Transition Period for Additional Non-Impairment Designations.
 - 2.0.F.1.1 When the Commission approves additional DS1 and DS3 loop or high capacity transport UNE non-impairment designations as described in Section 2.0.F, CLEC will have ninety (90) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition the applicable Non-Impaired Facilities to an alternative service.
 - 2.0.F.1.2 When the Commission approves additional Dark Fiber transport non-impairment Designations as described in Section 2.0.F, CLEC will have one-hundred and eighty (180) days from the effective date of the order in which the Commission approves the addition to the Commission-Approved Wire Center List to transition to an alternative arrangement. Qwest and CLEC will work together to identify those circuits impacted by such a change.
- 2.0.F.2 Rate During Transition Period for Additional Non-Impairment Designations.
 - 2.0.F.2.1 For a ninety (90) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any DS1 Loop UNEs, DS3 Loop UNEs, DS1 Dedicated Transport UNEs, and DS3 Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.
 - 2.0.F.2.2 For a one-hundred and eighty (180) day period beginning on the effective date on which the Commission approves an addition to the Commission-Approved Wire Center List, any Dark Fiber Dedicated Transport UNEs that CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle, shall be available for lease from Qwest at a rate equal to to 115% of the UNE rates applicable as of the effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.
 - 2.0.F.2.3 The 115% rate described in Sections 2.0.F.2.1 and 2.0.F.2.2 will be applied to CLEC bills on the following bill cycle, and may be applied as a manual adjustment. Any manual bill adjustment for the time period for which the facilities were in place will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) identification number per Billing Account Number (BAN) with an effective bill date as of the

effective date on which the Commission adds the Wire Center to the Commission-Approved Wire Center List.

2.0.F.2.4 The non-recurring conversion charge is addressed in Section 2.0.D of this Amendment.

2.0.F.3 Data. Qwest will file supporting data with the Commission when filing a request to obtain additional non-impaired designations added to the Commission-Approved Wire Center List. Qwest will also provide a copy of the supporting data pursuant to the terms of the applicable protective agreement/order to CLEC if CLEC has signed the applicable protective agreement/order (or is subject to any applicable standing protective order put in place by the Commission).

2.0. F.3.1 If Qwest relies upon Fiber-Based Collocators for its proposed non-impairment designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.

2.0. F.3.2 If Qwest relies upon Switched Business Line Count data for its proposed Non-Impairment Designation, the supporting data provided to CLEC will include at least the information required by the Commission in the Wire Center Docket.

2.0.F.4 Methodology: The Parties agree to use the methodology for non-impairment or tier designations adopted by the Commission in the Wire Center Docket.

II. Effective Date and Reservation of Rights

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties agree to implement the provisions of this Amendment upon execution.

The Parties, which are in negotiations regarding interconnection agreement language addressing terms of the TRRO, reserve their rights as to TRRO terms not set forth in this Amendment.

III. Further Amendments

Except as modified herein, the provisions of the Agreement, including the TRRO Amendment, shall remain in full force and effect. Except as provided in the Agreement, this Amendment may not be further amended or altered, and no waiver of any provision thereof shall be effective, except by written instrument executed by an authorized representative of both Parties.

IV. Entire Agreement

Other than the publicly filed Agreement, its Amendments, and the publicly filed Settlement Agreement in the Wire Center Docket, Qwest and CLEC have no agreement or understanding, written or oral, relating to the subject of this Amendment. The publicly filed Settlement Agreement in the Wire Center Docket is not intended to alter or amend the Agreement.

The Parties, intending to be legally bound, have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Signature Blocks

ATTACHMENT E



STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square, Suite 1700 100 Washington Avenue South Minneapolis, Minnesota 55401-2138

> TELEPHONE: (612) 341-7600 TTY: (612) 341-7346

VIA E-MAIL AND U.S. MAIL

June 28, 2006

29

To: All Parties on the Attached Service List

Re: In the Matter of CLECS' Request for Commission Approval of ILEC Wire Center Impairment Analysis

PUC Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211

and

In the Matter of a Commission Investigation Identifying Wire Centers in which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates PUC Docket No. P-999/CI-06-685

OAH Docket No. 11-2500-17274-2

Based upon recent e-mail communications from counsel in this matter, it is my understanding that the parties all concur in the use of the draft Protective Order I sent you last week. Accordingly, I have signed that Protective Order, and a copy is hereby served upon each of you.

Sincerely,

Bombon L. Neilson

BARBARA L. NEILSON Administrative Law Judge Telephone: (612) 341-7604

Encl.

OAH Docket No. 11-2500-17274-2 MPUC Docket No. P-5692, 5340, 5323, 465, 6422/M-06-211 MPUC Docket No. P-999/CI-06-685

In the Matter of CLECs' Request for Commission Approval of ILEC Wire Center Impairment Analysis and

In the Matter of a Commission Investigation Identifying Wire Centers in which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates

Administrative Law Judge's Service List as of June 28, 2006

Commission and Administrative Law Judge

Commission and Administrative Law Judge			
Dr. Burl W. Haar (15)	John J. Lindell	Barbara L. Neilson (Original)	
Executive Secretary	Analyst	Office of Administrative	
Public Utilities Commission	Public Utilities Commission	Hearings	
Suite 350	Suite 350	Suite 1700	
121 Seventh Place East	121 Seventh Place East	100 Washington Square	
St. Paul,, MN 55101-2147	St. Paul, MN 55101-2147	Minneapolis, MN 55401-2138	

T		42	
v	431	***	OC
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Linda Chavez (4)	Karen A. Finstad Hammel	Joan C. Peterson
Telephone Docketing	Assistant Attorney General	Jason D. Topp
Coordinator	Suite 1500	Corporate Counsel
Department of Commerce	445 Minnesota Street	Qwest Corporation
Suite 500	St. Paul, MN 55101	Room 2200
85 Seventh Place East		200 South Fifth Street
St. Paul, MN 55101-2198		Minneapolis, MN 55402

Dan Lipschultz Attorney at Law Moss & Barnett, P.A. Suite 4800 90 South Seventh Street	Joy Gullikson Corporate Counsel Onvoy, Inc. Suite 700 300 South Highway 169 Minneypolis, MN, 55426	Mary T. Buley Sr. Regulatory Manager Onvoy, Inc. Suite 700 300 South Highway 169 Minneapolis MN 55426
Minneapolis, MN 55402-4129	Minneapolis, MN 55426	Minneapolis, MN 55426

Court Reporter

Janet Shaddix Elling Shaddix & Associates Suite 122 9100 W. Bloomington Freeway Bloomington, MN 55431

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mary.buley@onvoy.com

Court Reporter

jshaddix@janetshaddix.com

STATE OF MINNESOTA BEFORE THE PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer Marshall Johnson Phyllis A. Reha Kenneth A. Nickolai Thomas Pugh Chair Commissioner Commissioner Commissioner Commissioner

In the Matter of CLECs' Request for Commission Approval of ILEC Wire Center Impairment Analysis

In the Matter of a Commission Investigation Identifying Wire Centers in which Qwest Corporation Must Offer High-Capacity Loop or Transport UNEs at Cost-Based Rates MPUC Docket No. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211

MPUC Docket No. P-999/CI-06-685

OAH Docket No. 11-2500-17274-2

PROTECTIVE ORDER

The purpose of this Protective Order ("Order") is to facilitate the disclosure of documents and information during the course of these proceedings and to protect Confidential Information and Highly Confidential Information. Access to and review of Confidential Information and Highly Confidential Information by parties other than government agencies shall be strictly controlled by the terms of this Order. The parties other than government agencies have represented and agree that Confidential Information and Highly Confidential Information as defined in this Order constitute "trade secret information" under Minn. Stat. § 13.37, subd. 1(b), and "nonpublic data" under Minn. Stat. § 13.02, subd. 9. The parties other than government agencies have

acknowledged that the government agencies involved in this docket, which include the Minnesota Public Utilities Commission ("Commission"), the Office of Administrative Hearings ("OAH"), the Minnesota of Commerce ("Department"), and the Office of Attorney General ("OAG") and Office of Attorney General-Residential and Small Business Utilities Division ("OAG-RUD") are subject to the Minnesota Government Data Practices Act ("MGDPA")¹ and records retention requirements of Minn. Stat. §§ 138.163-138.226. The parties other than government agencies, which parties are hereinafter referred to as "parties", "persons" or "entities" have further agreed to the terms of paragraphs one through twelve below, and, upon that agreement, and all the files, records and proceedings herein, it is hereby ordered:

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be of a trade secret, proprietary or confidential nature (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "NONPUBLIC DOCUMENT – CONTAINS TRADE SECRET DATA" designation. All copies of documents so marked shall be made on yellow paper. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as "NONPUBLIC DOCUMENT – CONTAINS TRADE SECRET DATA." Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

¹ Minn. Stat. Chapter 13.

- (b) <u>Use of Confidential Information Proceedings</u>. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceeding in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("proceedings"), and shall keep the Confidential Information secure as trade secret, confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.
- (c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in proceedings; (3) only those employees of the party who are directly involved in these proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to the government agencies, their counsel, employees, consultants and experts.
- (d) <u>Nondisciosure Agreement.</u> Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit A. Court reporters whose activities

are not regulated by Minn. Stat. Ch. 13 shall also be required to sign an Exhibit A upon written request of a party and to comply with the terms of this Order.

The nondisclosure agreement (Exhibit A) shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, employer, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within five (5) days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in section 1(c) above shall be responsible for having each such person execute an original of Exhibit A and a copy of all such signed Exhibit As shall be circulated to all other counsel of record promptly after execution.

- 2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and arguments in connection with this proceeding, or in the case of persons designated in section 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the proceedings in accordance with section 2(b) below.
- (b) <u>Destruction.</u> All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the proceedings.

The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. <u>Highly Confidential Trade Secret Information.</u> Any person, whether a party or non-party, may designate certain competitive Confidential Information as "Highly Confidential Trade Secret Information" (herein referred to as "Highly Confidential Information") if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

NONPUBLIC HIGHLY CONFIDENTIAL TRADE SECRET INFORMATION—USE RESTRICTED PER PROTECTIVE ORDER IN MPUC DOCKET NOS. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 AND P-999/CI-06-685

Placing a 'Highly Confidential" stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly

Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The redacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and Confidential Information described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit B of the nondisclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) five in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as Highly Confidential. Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Commission Advisory Staff members shall be limited to persons to whom disclosure is necessary. The Exhibit B also shall describe in detail the duties or responsibilities of the person being designated to see Highly Confidential Information and the person's role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in strategic or competitive decision making for any party, including the sale or marketing of products or services on behalf of any party.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be

made in writing to counsel submitting the challenged individual's Exhibit A or B within three (3) business days after receiving the challenged individual's signed Exhibit A or B. Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, in-house consultants, outside counsel and outside experts who have signed Exhibit B, and to the Department and OAG-RUD, their employees and counsel, and to their consultants and experts who have signed Exhibit B.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of this Order. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in a secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. <u>Small Company.</u> Notwithstanding anything to the contrary in this Order,

persons authorized to review Confidential Information and Highly Confidential Information on behalf of a company with less than 5,000 employees shall be limited to (1) a reasonable number of in-house attorneys who have direct the following: responsibility for matters relating to Highly Confidential Information; (2) a reasonable number of outside counsel; (3) the company's employees and witnesses; and (4) independent consultants acting under the direction of the company's counsel or senior management and directly engaged in this proceeding. Such persons do not include individuals primarily involved in marketing activities for the company, unless the party producing the information, upon request, gives prior written authorization for that person to review the Confidential Information or Highly Confidential Information. If the producing party refuses to give such written authorization, the company may, for good cause shown, request an order from the Administrative Law Judge ("ALJ") allowing that person to review the Confidential Information or Highly Confidential Information. The producing party shall be given the opportunity to respond to the company's request before an order is issued.

5. Masking. Information or documents provided in this proceeding showing the identity of any fiber-based collocators in a wire center must be designated as Confidential. Similarly, any information or documents provided in this proceeding showing the identity of a telecommunications carrier's business lines or line counts must be provided in a "masked" format, identifying the information using a code, and must be designated as Confidential. Each individual carrier will be provided its own code to verify data concerning that carrier. The government agencies will be provided a code for each carrier identified in the information or documents provided.

- 6. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.
- 7. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be Confidential in the following manner:
- (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
- (i) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and
- (ii) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.
 - (c) A ruling on the confidentiality of the challenged information,

document, data or study shall be made by a Hearing Officer after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such Confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by section 7(b) above.

- (d) The record of said in camera hearing shall be marked "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER IN MPUC DOCKET NOS. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 AND P-999/CI-06-685." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or order of the Hearing Officer and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.
- (e) In the event that the Hearing Officer should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be Confidential.
- 8. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:
- (i) Prior to the use of, or substantive reference to, any Confidential or Highly Confidential Information, the parties intending to use such information shall make that intention known to the providing party.

- (ii) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature.
- (iii) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
- (iv) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.
- (v) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.
- (b) <u>Seal.</u> While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER IN MPUC DOCKET NOS. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 AND P-999/CI-06-685" and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL USE RESTRICTED PER PROTECTIVE ORDER IN MPUC DOCKET NOS. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 AND P-999/CI-06-685," and shall not be examined by any person except under the conditions set forth in this Order.
- (c) In Camera Hearing. Any Confidential or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any cross-

examination on, or substantive reference to, Confidential or Highly Confidential Information (or that portion of the record containing Confidential or Highly Confidential Information or references thereto) shall be received in an <u>in camera</u> hearing, and shall be marked and treated as provided herein.

- information shall be limited to the Hearing Officer and persons who are entitled to review Confidential or Highly Confidential Information pursuant to section 1(c) above and have signed an Exhibit A or B, unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a Hearing Officer, the order of the Commission and/or final order of a court having final jurisdiction.
- (e) Appeal/Subsequent Proceeding. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal, or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.
- (f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within thirty (30) days after final settlement or conclusion of the proceedings. If the

providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel of the receiving party shall verify in writing that the material has in fact been destroyed.

- 9. <u>Use in Pleadings.</u> Where references to Confidential or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 7), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information contained therein. Any use of or substantive references to Confidential or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit A or B. All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.
- 10. <u>Summary of Record.</u> If deemed necessary by the Commission or ALJ, the providing party shall prepare a written summary of the Confidential or Highly Confidential Information referred to in the Order to be placed on the public record.
- 11. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as Confidential or Highly Confidential by any party to MPUC Docket Nos. P-5692, 5340, 5643, 5323, 465, 6422/M-06-211 and P-999/CI-06-685. In addition, experts and consultants of government agencies are subject to the provisions of this Protective Order that are applicable to experts and consultants of parties.

12. This Protective Order shall continue in force and effect after these dockets are closed.

Dated: June 28, 2006.

BARBARA L. NEILSON

Administrative Law Judge

EXHIBIT A

CONFIDENTIAL INFORMATION

Docket Nos. P-5692, 5340, 5643, 5323, 4	65, 6422/M-06-211 and P-999/CI-06-685
421/CI-05-1996, and agree to be bound by t	
+21/O1-03-1330, and agree to be bedied by t	
	Name
	Employer
	Job Title and Job Description
	Business Address
	Det
	Party
	Signature
	-
	Date

EXHIBIT B

HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective O	rder dated 2006, in MPUC
Docket Nos. P-5692, 5340, 5643, 5323, 46	
and agree to be bound by the terms and cond	
• • • • • • • • • • • • • • • • • • •	
	Name
	Employer
	The second state of the se
	Job Title and Job Description
	Business Address
	Party
	Party
	Signature
	Date

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF
DIECA COMMUNICATIONS DBA COVAD

COMMUNICATIONS COMPANY, ESCHELON
TELECOM OF ARIZONA, INC., MCLEODUSA
TELECOMMUNICATIONS SERVICES, INC.,
MOUNTAIN TELECOMMUNICATIONS, INC.,
XO COMMUNICATIONS SERVICES, INC. AND
QWEST CORPORATION REQUEST FOR
COMMISSION PROCESS TO ADDRESS KEY
UNE ISSUES ARISING FROM TRIENNIAL
REVIEW REMAND ORDER, INCLUDING
APPROVAL OF QWEST WIRE CENTER LISTS.

T-03632A-06-0091 T-03267A-06-0091 T-04302A-06-0091 T-03406A-06-0091 T-03432A-06-0091 T-01051B-06-0091

STATE OF COLORADO COUNTY OF DENVER

AFFIDAVIT OF RENÉE ALBERSHEIM

SS

Renée Albersheim, of lawful age being first duly sworn, deposes and states:

- 1. My name is Renée Albersheim. I am a Staff Witnessing Representative for Qwest Services Corporation in Denver, Colorado. I have caused to be filed written responsive testimony in Docket Nos. T-03632A-06-0091, T-03267A-06-0091, T-03406A-06-0091, T-03432A-06-0091, T-01051B-06-0091.
- 2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.

Renée Albersheim

SUBSCRIBED AND SWORN to before me this 24

day of September, 2007.

My Commission Expires:

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman WILLIAM A. MUNDELL JEFF HATCH-MILLER KRISTIN MAYES GARY PIERCE

IN THE MATTER OF THE APPLICATION OF) DO	CKET NO. T-03632A-06-0091
DIECA COMMUNICATIONS DBA COVAD)	T-03267A-06-0091
COMMUNICATIONS COMPANY, ESCHELON)	T-04302A-06-0091
TELECOM OF ARIZONA, INC., MCLEODUSA)	T-03406A-06-0091
TELECOMMUNICATIONS SERVICES, INC.,)	T-03432A-06-0091
MOUNTAIN TELECOMMUNICATIONS, INC.,)	T-01051B-06-0091
XO COMMUNICATIONS SERVICES, INC. AND)	
QWEST CORPORATION'S REQUEST FOR)	
COMMISSION PROCESS TO ADDRESS KEY)	
UNE ISSUES ARISING FROM TRIENNIAL)	
REVIEW REMAND ORDER, INCLUDING)	
APPROVAL OF QWEST WIRE CENTER LISTS)	

RESPONSIVE TESTIMONY ON THE SETTLEMENT AGREEMENT

OF

RACHEL TORRENCE

ON BEHALF OF

QWEST CORPORATION

SEPTEMBER 28, 2007

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1		I. IDENTIFICATION OF WITNESS
2	Q.	PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION WITH
3		QWEST CORPORATION.
4	A . •	My name is Rachel Torrence. My business address is 700 W. Mineral Ave.,
5		Littleton, Colorado. I am employed as a Director within the Network Policy Group
6		of Qwest Services Corporation. I am testifying on behalf of Qwest Corporation
7		and its affiliates ("Qwest").
8	Q.	HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS DOCKET?
9	A.	Yes, I filed direct testimony in this docket on June 23, 2006. I also filed rebuttal
10		testimony on October 6, 2006.
11		II. PURPOSE OF RESPONSIVE TESTIMONY
1 1		II. I OKI GOL OF KLOF OROTVE TEOTIMORT
12	Q.	WHAT IS THE PURPOSE OF YOUR RESPONSIVE TESTIMONY ON THE
13		SETTLEMENT AGREEMENT?
14	A.	The purpose of my testimony is to respond to the Settlement Agreement
15		testimony of Mr. Armando Fimbres, who filed on behalf of the Staff of the Arizona
16		Corporation Commission on September 7, 2007.
17		In his testimony, Mr. Fimbres presents Staff's view of the Settlement Agreement
18		("Agreement") jointly filed by Qwest and the Joint CLECs together ("the Parties")
19		on June 17, 2007. My responsive testimony will address Staff's

1		recommendations regarding the methodology contained in Section V.B. and used
2		by Qwest in determining fiber-based collocators.
3		III. SUBSEQUENT CARRIER AFFILIATIONS SHOULD NOT BE USED TO
4		DENY LEGITIMATE NON-IMPAIRMENT STATUS
5	Q.	PLEASE COMMENT ON QWEST'S POSITION REGARDING THE FIBER-
6		BASED COLLOCATIONS OF AFFILIATED CLECS AND PLEASE RESPOND
7		TO MR. FIMBRES' RECOMMENDATION.
8	A.	First and foremost, Qwest will count affiliated CLECs as only one fiber-based
9		collocator if, at the time of Qwest's count, the CLECs enjoy legal affiliate status or
10		have completed the merger or acquisition process. However, Qwest strongly
11		disagrees with Staff's recommendation that "regardless of the data vintage,
12		affiliated fiber-based collocators should not be counted separately if their legal
13		affiliation exists at the date of a Commission Order designating a wire center as
14		non-impaired."
15		The TRRO does not establish a minimum time period for any wire center to meet
16		the prescribed definitions before it can be defined as non-impaired.
17		Furthermore, once evidence is gathered and presented substantiating that a

given wire center is non-impaired, the wire center is considered to be "non-

impaired" going forward and in perpetuity. In short, once a wire center is non-impaired, a wire center stays non-impaired.

When Qwest gathers and presents the evidence of fiber-based collocation, such evidence is necessarily a snapshot in time. That snapshot in time will show the number of fiber-based collocators, meeting the TRRO's definition, in a given wire center. If this snapshot in time shows that, for example, a given wire center houses four fiber-based collocators, that wire center is a non-impaired wire center. The wire center should remain a non-impaired wire center even if it takes several months (or even years) for the Commission to approve Qwest's application for non-impairment. The fact that subsequently, one or more of those fiber-based collocators at a particular wire center may merge or become affiliated in some manner, does not change the fact that at a given and defined point in time, the wire center met the TRRO's definition of a non-impaired wire center.

Staff's recommendation would completely ignore the fact that non-impairment at a particular wire center actually existed, and would therefore deny Qwest the appropriate compensation for its facilities as a result. Furthermore, given that a Commission proceeding may take months (and perhaps years) to conclude, Staff's recommendation could well provide an incentive for a CLEC to do whatever is needed to delay Commission approval if a merger or acquisition is even remotely possible. This potential gamesmanship would disadvantage Qwest competitively, as well as financially, by denying it the relief that the FCC

¹ 47 CFR § 51.319 (e)(3)(i)

intended. Therefore, Qwest believes that the Commission should reject Staff's recommendation and that it should uphold a wire center's non-impairment even if two or more CLECs later enter into an affiliate arrangement.

4 Q. HOW DOES QWEST RESPOND TO STAFF'S RECOMMENDATION 5 REGARDING AN APPROPRIATE RESPONSE TIME BY CLECS TO 6 INQUIRIES BY QWEST AS TO THEIR COLLOCATOR STATUS?

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A.

In Section V.B.4 of the Agreement, the CLECs are given a 10-business day time frame to respond to a letter from Qwest asking for validation of their fiber-collocator status. Qwest believes that 10 business days (at least 14 calendar days) provides CLECs with more than enough time to respond to Qwest's inquiries. Staff recommends that this 10-business day time frame be extended to 60 days. However, neither Qwest nor the Joint CLECs (who agreed to the 10-business day time frame) believe this time frame is reasonable or necessary.

For the initial wire center filings, the TRRO set forth an ambitious time table. Given the rather short time frames after the formal complaint issued the TRRO, Qwest and the CLECs had to do the best they could within the time allotted. Notably, many CLECs did indeed respond to Qwest's collocation investigation request during the two-week period that Qwest requested. Moreover, as part of the settlement agreement, the Parties agreed that a 10-business day time frame is acceptable. And the CLECs, better than anyone else, are in the best position to know what is, and what is not, acceptable for their respective businesses.

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Additionally, going forward, the scope (and number of wire centers) of any 1 2 requests for validation will be much narrower, and thus a two-week time frame is 3 more than reasonable. 4 Curiously, Staff, offers no substantiation for the 60-day time frame (a full two 5 months) it is recommending. That time frame would cause a substantial delay in what should be a fairly straight-forward proceeding. Finally, given Staff's position 6 7 regarding legal affiliate status, this type of delay could also play into a CLEC's 8 strategy for delaying the approval process as long as possible.

IV. CONCLUSION

- 10 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
- 11 A. Yes, it does. Thank you.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION OF **DIECA COMMUNICATIONS DBA COVAD COMMUNICATIONS COMPANY, ESCHELON** TELECOM OF ARIZONA, INC., MCLEODUSA TELECOMMUNICATIONS SERVICES, INC., MOUNTAIN TELECOMMUNICATIONS, INC., XO COMMUNICATIONS SERVICES, INC. AND **QWEST CORPORATION REQUEST FOR COMMISSION PROCESS TO ADDRESS KEY UNE ISSUES ARISING FROM TRIENNIAL** REVIEW REMAND ORDER, INCLUDING APPROVAL OF QWEST WIRE CENTER LISTS.

DOCKET NO. T-03632A-06-0091 T-03267A-06-0091 T-04302A-06-0091 T-03406A-06-0091 T-03432A-06-0091 T-01051B-06-0091

STATE OF COLORADO COUNTY OF ARAPAHOE **AFFIDAVIT OF** RACHEL TORRENCE

SS

Rachel Torrence, of lawful age being first duly sworn, deposes and states:

1. My name is Rachel Torrence. I am a Senior Staff Witnessing Representative - for Qwest Services Corporation in Littleton, Colorado. I have caused to be filed written responsive testimony in Docket Nos. T-03632A-06-0091, T-03267A-06-0091, T-04302A-06-0091, T-03406A-06-0091, T-03432A-06-0091, T-01051B-06-0091,

2. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Further affiant sayeth not.

Rachel Torrence

SUBSCRIBED AND SWORN to before me this 39

day of September, 2007.

Notary Public

My Commission Expires: 5-4-88

PATRICIA M. COOPER STATE OF COLORADO **NOTARY PUBLIC**